

From: Jim McWilliams  
Sent: Saturday, August 29, 2009  
Subject: Tax Preparers Performance Standards

Dear Treasury:

My name is F. James McWilliams and my e-mail address is f.jamesmcwilliams@cox.net. I am a CPA and retired from the IRS in 1982 and have been in private practice ever since. I have read a number of the proposals on the subject matter and none have covered what I feel is the most important point. The tax law is much much too complicated. The action that you could take to improve the performance of practitioners to make the tax law simple. It would not only improve the performance of the tax practitioners but would also improve the performance of IRS personnel who are having great difficulty in enforcing the law. Hopefully, any test you give to practitioners will have been taken by IRS employees at all levels of enforcement. Failure to the IRS personnel to properly enforce the law results in a number of abuses by the Government. One of the greatest is proposals that are incorrect that are accepted by some taxpayers because they are not represented or properly represented. Next in line would be the large and massive adjustments made to CYA the auditor and manager. The bad results from this are substantial dollar reduction settlements at Appeals and the encouragement of the TV advertisements for settlements at pennies on the dollar. In addition to that the Appeals Office is so backed up with cases that they are holding them for months and months before a hearing offered. This results in excessive interest charges being assessed. The employees of the IRS are, for the most part, doing the best that they can but the difficulty of the tax law and the ability to settle cases at a lower level have made their job almost impossible. The backlog in Appeals is a disgrace and makes the job of an Appeals Officer just that much more difficult because they are continually being disrupted by those waiting for action. Usually, when you have a problem it is best to first look within to see what needs to be done and then look at others. There is little doubt that there are some tax practitioners that are doing a poor job and those who are continually testing the system. Just because you are an attorney or CPA doesn't automatically take you out of these later categories.

Thank you for considering my comments.

**From:** Eileen Birge  
**Sent:** Saturday, August 29, 2009  
**Subject:**

I fully support the registration and licensing of tax preparers, I would suggest the following:

1. Tax preparers (other than enrolled agents/CPAs/attorneys) each need individual licensing. Members of the other groups: CPAs, attorneys, etc. each need an individual tax preparer identification number.
2. Similar to VITA certifications, the licensing should be graded. The education and testing requirements should match the level of complexity of the returns associated with the grade. Any certification should prominently state the types of returns and schedules for which the preparer is licensed. The certificate should also indicate if the registrant is allowed to direct refunds to an account other than the taxpayer. (See #9 below.)
3. Registration requirements, initial testing, licensing fees, and CPE requirements for tax preparers at the basic levels should be kept as low as practical--if we make these requirements too onerous, fees charged to taxpayers will inevitably rise.
4. The IRS should waive licensing and registration fees for preparers who attest that **all** their work will be as a volunteer. The preparer's certificate should indicate that the individual (and his/her company) is not permitted to charge fees for return preparation.
5. The IRS should supply all materials which will form the foundation of tests and example tests in an easy to navigate section of the IRS website. The development of guided on-line training materials is highly encouraged.
6. Preparers should be able to fulfill continuing education requirements with self-study or IRS sponsored, free classes. (see testing below).
7. With the exception of VITA sponsored trainees, all preparers wishing to be certified should be tested in controlled environments that require the presentation of government sponsored picture identification. Commercial test centers such as Thompson Prometric or Pearson Vue could be used. (VITA volunteers could be tested at a VITA site.)
8. After initial certification, the preparer should be required to complete a "current issues" examination periodically.
9. Registration and licensing fees for preparers who will have taxpayer refunds directed to them or their company should be higher (to cover additional inspection costs).
10. Regulations should require that:
  - These regulations are displayed prominently where the preparer meets the taxpayer and that the taxpayer receives a form explaining the regulations.
  - Preparers' certificates are displayed prominently where the preparer meets the taxpayer
  - (including the certification level, whether the preparer can charge for his/her services, and whether the preparer is permitted to direct refunds to any account other than that of the taxpayer and/or spouse).
  - Preparers sign the return (or electronic transmission approval form) with their name and preparer identification number before the taxpayer signs.
  - All fees, charges and the annual percentage rate of any refund anticipation loan must be fully disclosed to the taxpayer prior to signing the return. (This could be included with the original regulation form described above.)
11. Violation of these regulations should include financial penalties and the revocation of certification for periods of years to permanency. Assisting in fraud, failure to apply due diligence, etc. should result in similar penalties.
12. Tax preparers with outstanding IRS liens or penalties should not be eligible to prepare returns (regardless of status--i.e., this would also cover ePAs, attorneys, enrolled agents.)

Thank you for your consideration of these comments.  
Eileen Birge  
Member, Taxpayer Advocacy Panel

From: David  
Sent: Saturday, August 29, 2009  
Subject: Comment of Paid Tax Preparers

I propose that paid tax preparers be obligated to disclose the sources of his income to the client before they enter into agreement for services. While the preparer would not be obligated to disclose dollar amount of annual income, he would present his income listed as percentages. An example might be in the following form:

Day job as school teacher: 65%

Preparation of taxes: 25%

Investment income: 1%

Rapid refund commissions: 9%

Thank- you.  
David Hetzler

Sent: Sunday, August 30, 2009  
Subject: Notice 2009-60

Big income tax preparation services such as H & R Block, Jackson Hewitt, and Liberty Tax Service should be required to publish their fee schedules and post them conspicuously in their offices. This would not only allow consumers to compare prices, but it would give them an opportunity to make informed decisions and avoid committing themselves before revealing sensitive information to a tax preparer. As it is, preparers tell the customer that they won't know how much the return will cost until all of their information has been entered into the computer. Employees of at least some *big* tax preparation companies are discouraged from even *giving* an estimate. Often the employees don't have access to a fee schedule, and the owners of the tax preparation companies know from experience that once the customer's information has been entered into the computer, they are much more *likely* to agree to pay for the return, no matter how much it costs. If consumers knew what the tax preparation fees would be before they gave out any personal information, they would not feel roped in at the end of the tax preparation interview, and consider themselves obliged to take something they don't want and likely can't afford. Employees of these tax preparation companies would welcome this as well, because they could be open with customers from the start. When a customer inquires about the cost, and the preparer can't give them a straight answer, because company policy forbids it, it *gives* both customer and preparer the impression that the preparer is trying to conceal something, and attempting to get the customer's business by hook or by crook. Publishing the fee schedules would help foster an atmosphere of ethical behavior and honesty.

From: Bookie  
Sent: Sunday, August 30, 2009  
Subject: Notice 2009-60 written comment

#### WRITTEN COMMENT RE REGULATION OF TAX-RETURN PREPARERS:

Author of these Comments is an unlicensed preparer who has practiced for over 40 years. She gets approximately 40 hours of continuing ed per year and has had a CAF number and a PTIN since their inception. Became aware of request for comments via IRS email and via attendance at New York IRS Forum. YES, RETURN PREPARERS SHOULD BE REGULATED

1) CONTINUING EDUCATION (Most Important) A continuing-ed requirement is a must for all preparers, similar to that now applicable to CPA's and Enrolled Agents.

2) CIRCULAR 230 This should apply to all preparers, including the reinstatement of 2848 representation. The rudeness and demeaning treatment of unenrolled preparers by IRS employees since this reg change is unproductive and excludes taxpayers represented by these preparers from a level playing field with those represented by CPA's and Enrolled Agents. Often the 3rd-party checkbox allows more representation (as experienced with IRS employees) than the 8821! If the preparer has the authority and knowledge to prepare the return, the preparer should be allowed to represent the taxpayer with regard to all aspects of that return. Note that until the regs were changed a few years ago, experienced preparers routinely represented clients under the 2848. The qualifications of such preparers to represent their clients most certainly did not diminish because of the reg change, yet IRS is treating such preparers as if they are "outsiders"!

#### 3) TESTING

a) One "entry" test could be required of unenrolled preparers not grandfathered.

b) If an annual or other "renewal" test is required, it should then apply to ALL preparers, CPA's and Enrolled Agents alike. Otherwise, given the continuing education requirement being instituted, a "renewal" test is inappropriate since CPA's and Enrolled Agents have no such requirement based on the continuing ed mandate.

#### 4) APPRENTICESHIPS

Should be required of all but grandfathered preparers. Should definitely NOT be required of grandfathered

preparers, as these preparers already have a client base and could not desert them to work for someone else.

#### 5) GRANDFATHERING

Experienced preparers should be "grandfathered" and not required to take any type of testing or serve any type of apprenticeship in order to become licensed under these proposed regulations.

Following are tools IRS could use to confirm eligibility:

a) Continuing Ed Hours. Applicants would be asked for proof of continuing ed hours over the prior 3 years (longer would be difficult, since records are seldom kept longer than the 3-year tax-return audit period; this would also match requirement for CPA's and Enrolled Agents).

b) Experience.

1) Number of years as tax-return preparer

2) Number of returns prepared annually and type of returns

3) History of preparer training

4) Other than the preparer's statement, following are ways IRS could confirm preparer's experience:

a) IRS record of first recording of CAF number and its frequency of use

b) IRS record of first recording of PTIN and number of returns reflecting this PTIN

c) Cases handled with Taxpayer Advocate Service

Speakers at the IRS Forum in New York indicated that the IRS database might not have this information. Since it is possible to get a list of taxpayers recorded on a given CAF and since PTIN's showing on returns are recorded by IRS, this information should be readily available. I hope you will consider these comments seriously. Many preparers are as competent or more so than the CPA's and Enrolled Agents we've inherited clients from (based on the errors found in prior-year returns)! New preparers with less than a set number of years' experience, a set number of returns prepared, lack of training and continuing ed should be your target.

Thank you for listening.

Bookie Louise  
Public Accountant  
The Bookie, Ltd.

From: ron grafman  
Sent: Sunday, August 30, 2009  
Subject: Tax preparers regulation

I am a former Revenue Agent (1975-1980) and have been preparing tax returns since 1981. In my years as a preparer, I've been very diligent in getting my continuing education as an Enrolled Agent. I strongly believe that all preparers need to be regulated. I think there should be an open book exam on basic income tax laws and all tax preparers not covered under IRS Circular 230 should be required to take this exam. All preparers should be required to obtain at least 30 hrs of continuing education each year (this includes CPAs, attorneys and EA's). Also, another area to consider is whether or not those preparers who pass the basic income tax exam should be allowed to prepare any tax returns other than 1040s. What I think is needed is testing at different levels; (different licensing levels): for example - level 1 would be 1040s only level 2 would cover 1040s, 1065s, and all other business returns (a separate test would be needed for preparing level 2 returns). level 3 would include all those preparers now covered under Circular 230 (EAs, CPAs and Attorneys). Also, those who have the ACAT credential as described by the National Society of Accountants (NSA) should be considered for recognition as Circular 230 preparers. Although I belong to many professional tax organizations, the above are my thoughts as an individual small business tax preparer.

Sincerely  
Ron Grafman EA  
Germantown MD

Sent: Sunday, August 30, 2009  
Subject: Notice 2009-60

Attachments: IRS Notice 2009-60 final.pdf  
On Behalf of Thomas Sadler and David Costello with the National Association of State Boards of Accountancy (NASBA):

Attached please find a response to Notice 2009-60. Thank you for your consideration.  
Linda L. Biek, CPA  
National Association of State Boards of Accountancy

Re: Notice 2009-60

Dear Commissioner Shulman:

Thank you for providing an opportunity for input regarding the Internal Revenue Service proposition which suggests that tax return preparers must be registered and regulated to ensure proper protection of the public. The questions posed in Notice 2009-60 are very thought provoking and NASBA hopes to engage in a continuing dialogue with the Service in an attempt to improve the current process. Highlighted in Notice 2009-60 is the importance of public protection. The primary mission of the state boards of accountancy is also public protection. In order to help state boards achieve their mission, the National Association of State Boards of Accountancy (NASBA) works to enhance their effectiveness by identifying, researching, and analyzing major current and emerging issues and using this information to develop solutions. This collaboration has served the boards and the public well for more than 100 years. Decades ago, professional boards had little regulatory authority and were strictly license-issuing agencies. From the 1920s to the 1970s, many states consolidated the regulatory strength of the professional boards along with many other licensing entities because, at that time, there was no perceived difference between issuing a professional license and a fishing license. However, the complexities of the tax code and financial reporting standards have largely contributed to the public's expectation that accountancy regulatory boards are involved not only in licensing of CPAs, but also their competency, professional conduct, and quality of service. It is from this vantage point that we offer comments on IRS Notice 2009-60. The Uniform Accountancy Act, a model act which has been adopted by an overwhelming majority of the state boards, specifies that CPAs must meet certain requirements in order to profess special competence in taxation, accounting, attest or management consulting. In order to obtain the CPA license issued by the state, an individual must obtain 150 hours of college education; pass an extremely rigorous, psychometrically-valid exam; and gain experience in the field of accounting, taxation and attest competencies. Once the individual has obtained a license, they must participate in a renewal process requiring successful completion of continuing education; adherence to the state-specified code of conduct; and demonstrated compliance with applicable professional standards. It should be noted that the CPA examination is a 4-part, high-stakes exam with one of the lowest pass rates in the country. One of those four parts is dedicated to the **Regulation** section which tests candidates' knowledge of federal taxation, ethics, professional and legal responsibilities, business law and the skills needed to apply that knowledge. A review of the current *Uniform CPA Examination – Examination Content Specifications* clearly identifies the areas within tax practice that are included on the CPA exam and should be reviewed to gain a better understanding of the rigor, comprehensiveness and validity of the CPA exam. In addition to the technical specifications of succeeding in a tax practice, the CPA Exam tests a candidate's understanding of the concepts pertaining to financial accounting and business. This represents a battery of skills that enhance the professional's ability to serve the client and the public. Given the Douglas Shulman limited time frame for responding to Notice 2009-06, NASBA will be sending additional documentation which will provide a more detailed analysis of the topics covered in the Regulation section. Upon completing the requirements and receiving a CPA license, the individual must adhere to the laws and rules of that state or run the risk of a license revocation or suspension. Oftentimes, state boards of accountancy are the first and only remedy for consumer complaints in the few cases involving CPAs. It is through this process that the public is protected since CPAs who fail to maintain competency and high



ethical standards of practice are subject to an organized, objective disciplinary process. Revocation or suspension of the CPA license could result in a substantial decrease in a professional's livelihood and lead to a change in careers. While a CPA's technical competency is of critical importance to the state boards, they also require additional training in ethics. Many states require completion of an ethics exam prior to obtaining licensure as a CPA; others require ethics training as part of the continuing education process while other states require both. In order to strengthen the disciplinary process related to a CPA's license, NASBA has been working with representatives of the Service to promote interaction between state boards of accountancy and the Service to ensure that both groups are aware of individuals who pose a threat to the public. NASBA recommends that this type of collaboration serve as a foundation for the Service as they continue to work towards strengthening the knowledge and skills of the unregistered preparers. Based on our experience in database management, NASBA would like to share some of our successes as the Service looks to broaden the registration process. Professional Credentialing Services (PCS), a subsidiary of NASBA works with more than 80 state agencies as well as national associations providing all levels of assistance for examination, certification and licensure services. In a time of decreasing budgets, increased workloads and staffing concerns, PCS offers solutions for increasing efficiencies and controlling costs. Within the next two weeks, PCS will forward a more comprehensive synopsis of the range of test development and supporting activities that are available. Another success story involves the National Candidate Database (NCD) which was developed and implemented by NASBA for the computerized CPA examination. The NCD houses information on every individual who has been approved to sit for the CPA exam since 2004 and will assist the state boards of accountancy in the development of an accounting licensee database. These tools and others have helped regulatory boards focus on their mission of protecting the public by transporting administrative activities to an organization who can take advantage of economies of scale. NASBA respectfully requests that the Service, in continuing its consideration of options for competency evaluation and registration of tax preparers, supplement these activities with studies utilizing empirical evidence to determine the value and appropriateness of the CPA Exam in assessing in a comprehensive manner the CPA's credential for tax preparation and practice. In addition, NASBA recommends that the Service continue their interaction with state boards of accountancy to further develop a network of public protection involving both federal and state agencies. Finally, NASBA welcomes the opportunity to meet with representatives of the Service to discuss how we manage the registration and licensing exam administration for the CPA and other professions\ . The development of a structure and mechanism for evaluating and registering unlicensed preparers would be a huge step in furthering the goal of public protection. We would be pleased to help.

Sincerely,  
Thomas J. Sadler, CPA  
Chairman

David A. Costello, CPA  
President and CEO

From: Barbara Waheed  
Sent: Sunday, August 30, 2009  
Subject: "Notice 2009-60"

To: CCPA:LPD:PR (Notice 2009-60)  
RE: Notice 2009-60"

Mr. Commissioner Doug Schulman

Thank you Mr. Commissioner Doug Schulman for allowing me to offer my input to the IRS and contribute ideas for the IRS proposals for the new regulations of tax preparers.

Professionalism is an ethical and honored duty to me when preparing tax returns. I hope to look forward to many more years as an E-File Provider by continuing to stay in compliance to the Internal Revenue Service. E-File Providers have contributed large numbers of E-Filed returns to help our taxpayers to the wave of the future. "According to the IRS figures, Self-Prepared Returns continued a rapid growth in 2009". Here are some ideas for proposals that I would like to add to the Forums to be addressed to increase taxpayer compliance and to ensure uniform and high ethical standards of conduct for tax preparers:

1. Self-prepared returns either manually or electronically filed (non-paid preparers, next door neighbors, taxes on the go prepared in cars, etc)?
2. Free E-File on-line if income is under a certain limit?
3. Free services for those that can't afford a paid service that are held in libraries, stadiums, gyms, recreation and civic centers?
4. Large companies that have all of these seasonal prepares that aren't CPA's, Attorneys, Enrolled Agents that are going to be subjected to the new regulations?
5. Softwares that can be purchased in the stores for tax preparation controlling?
6. IRS gives a suitability check to those that are E-File Providers and if one doesn't comply you can't EFile and hopefully this will continue to be done?
7. Could experts in the field of identify security with the new electronic technologies-people are paying for some vendors to obtain your SSN, drivers license, birthdates, death certificates to steal peoples identities?
8. Accountants with types of college degrees-Associate, Bachelor, Master, etc- would they be in compliance according to Section 448 (d)(2) "field of Accounting non-CPA accounting services are covered?

Sincerely and Thank you again!!  
Barbara Waheed  
Waheeds Experience Services  
Authorized E-File Provider  
NSTP member

Sent: Sunday, August 30, 2009  
Subject: Regarding Tax Professionals

If the IRS institutes some form of licensing please consider that many unenrolled preparers do not prepare corporate or partnership returns. As a matter of fairness we should not have to take a test in these areas. We should only be tested on those types of returns we prepare. I have been preparing taxes since 1975, If I have to pass a test which covers tax returns I never prepare I may have to take early retirement from my field.

Mark Goldberg

From: Ron Pye  
Sent: Sunday, August 30, 2009  
Subject: Conduct of the Tax Return Preparer Community

The purpose of this e-mail is to give comments as to the needs to make the tax return preparation services better. CPA's, licensed Attorneys, and EA's have enough regulatory provisions with the need to take a 10 to 12 hour test first, then to have 15 to 20 hours of continuing education credits per year. Also every year at least 2 hours of CPE's have to do with Ethics. Also most CPA's, licensed Attorneys, and EA's belong to at least 1 tax professional organization. Many tax professional organizations put on tax seminars on various sUbjects and IRS laws. Also at these seminars the organization will issue CPE certificates for attending the seminar. At anytime the IRS can ask for evidence of taking the seminar. The professional organization doing the seminar keeps track of the attendance. By going to these seminars the organizations, IRS and State Revenue Service show how to work together in correcting some of the problems. Many professional organizations pUblish monthly or quarterly publications that provide a lot of information. The tax professional will have to pay yearly dues to support the organization that provide various services. There are some good non licensed tax preparers out there, but there are also a large number of bad non licensed tax preparers. They don't have to go by any tax laws or rules, they are not even regulated. They don't have to take any tests and pass them, they don't have to get any continuing education and they don't have to get any CPE's in Ethics. In other words most non licensed tax preparers have very little if any money outlay. They can just hang a OPEN sign and then they can do tax returns. While CPA.s, licensed Attorneys, and EA's have to spend hundreds even thousands of dollars to get licensed or get certified. Then each year spend hundreds of dollars and hours to maintain certification. I think that all non licensed tax preparers should have to be licensed and get a set number of CPE's per year. They should have to pay what ever it cost the licensed tax preparer. What makes them any better than the CPA, Attorney, or EA. This should be done over a 3 or 4 year period. They should be given a certain letter and number code so as to show what year they are in to get their license. Some non licensed tax preparers are getting away with a lot. For example a taxpayer will go to a licensed tax preparer to get their tax return done, but then they will not like the results. So then they will go to the non licensed tax preparer to get the return done over. Thus getting better results on the return. Some of the bad non licensed tax preparers ( because of not being regulated) are laughing at the licensed preparers. So this is making the TAX GAP bigger. When the IRS hires the 700 to 800 new agents their time should all be spent on getting the non licensed tax preparers into the program. Then for sure the TAX GAP would be a lot smaller.

Sincerely,  
Ron Pye, EA

August 31, 2009  
LEGAL PROCESSING DIVISION  
PUBLICATION&. REGULATIONS  
BRANCH

CCPA:PD:PR (Notice 2009-60)

RE: Notice 2009-60, Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance

Dear Commissioner Shulman:

The AICPA is pleased to provide these comments on Notice 2009-60, Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance. We provide these comments as a supplement to the statement of Michael P. Dolan, our IRS Practice and Procedures Committee Chair, before the Internal Revenue Service Public Forum on the Tax Return Preparer Review held on July 30, 2009. In our July 30 statement, Mr. Dolan stated the AICPA: (1) supports the Commissioner's efforts to ensure that "all preparers are ethical, provide good service and are qualified;" and (2) concurs with the IRS strategic plan's recognition that tax professionals play a key role in sustaining our voluntary compliance tax system. Further, we stressed that the IRS already has sufficient authority to regulate federal tax return preparers without the need for new legislation through the current penalty structure, Circular 230, and implementation of one unique identification number for all preparers (and all other tax practitioners) to track all interactions with the Service. Our statement also strongly advised against imposing duplicative regulatory processes on CPAs, attorneys, enrolled agents, and the other professionals already subject to Circular 230. We applaud your efforts in soliciting input from a broad range of stakeholders regarding the Service's review of issues concerning tax return preparers. In the spirit of your efforts in this area, we are providing the following responses to the questions posed by Notice 2009-60.

1. What types of individuals, entities, and professionals currently work as tax return preparers? How are their tax return preparation services currently monitored or regulated by professional organizations or the government? How could this monitoring and regulation be improved? local or regional partnerships, large regional firms and large national and international firms. Our members enjoy the confidence of an extraordinarily broad and diverse client base - from individual taxpayers with uncomplicated 1040 returns to large publicly traded partnerships and the world's largest multinational corporations. As a predicate to offering their professional tax return preparation services, CPAs must complete a specified course of academic study, pass a challenging multi-part examination including tax issues and professional ethics, and satisfy continuing professional education (CPE) requirements of the jurisdiction(s) in which they are licensed to practice. Furthermore, our members practice under the guidance, restrictions and disciplinary regimes defined in the AICPA Code of Professional Conduct, the AICPA Statements on Standards for Tax Services (SSTS), and in federal tax matters, Circular 230. In our view, CPAs are both sufficiently skilled and adequately overseen. Our members satisfy arduous educational, testing, licensing and CPE requirements of the CPA profession and they conduct their practices within the quality and ethical standards articulated by the Office of Professional Responsibility, state boards of accountancy, the AICPA and state CPA societies. As such, the overwhelming majority of CPAs serve the best interests of their clients as well as our voluntary compliance-based tax system, while those who fall short in those professional obligations are currently subject to serious Federal and state sanctions for non-compliance, including the potential for penalties, fines, and loss of professional licensure.

2. How do differences in regulation and oversight affect how the various groups of tax return preparers interact with the Service and taxpayers?

We believe that certified public accountants who offer federal tax services (and certain other tax practitioners including enrolled agents, and attorneys) are regulated under Circular 230. Through this oversight, CPA tax practitioners are subject to regulation and oversight both when they directly interact with the IRS and when they assist their clients - taxpayers - in interacting with the IRS. Examples of such interaction include tax return preparation, the IRS Practitioner Priority Service, IRS e-services, and representation of

clients in connection with IRS examinations. We believe all tax return preparers should be regulated under Circular 230; that is, all tax return preparers should be regulated and subject to the same sanctions. Circular 230 provides ethical and professional standards that protect the taxpayer when that taxpayer retains a tax return preparer who practices before the IRS to prepare his tax returns. These standards should apply not only to an enumerated category of Circular 230 practitioners, but to all tax return preparers.

3. Is there a minimum level of education and training necessary to provide tax return preparation services? If so, who should be responsible for ensuring that a tax return preparer meets this minimum level and how should that be done?

Section 56.02 of our Code of Professional Conduct provides that a CPA should not hold himself out to perform services that he is not competent or trained to perform. We strongly support the incorporation of this notion of competency into the regulation of all tax return preparers. In this context, taxpayers expect and need tax return preparers who are able to provide preparation services for returns ranging from simple to very complex returns. Many individuals are able to prepare their own returns but choose to use a tax return preparer, even though their return could be considered simple. In those cases, the return preparer, particularly one with access to commercial return preparation software, may be sufficiently aware of the relevant tax rules by reading and understanding the instructions to the return. On the other hand, preparation of a complex individual or business return requires significant training and experience regarding the tax law provisions that govern the issues found in such returns. Thus, in our view, the education and training that should be expected of a preparer is return specific. We believe that no set of rules for minimum education and training will meet the diverse needs of taxpayers and preparers. Instead, each preparer should be responsible for ensuring that he has the level of education and training necessary to competently perform the preparation job for which he is engaged.

4. What, if any, service and outreach should be provided to tax return preparers and taxpayers? Who should provide (and bear the costs for) these needed services?

As stated previously, it is the responsibility of the preparer to be conversant with the tax law governing the issues in returns he or she prepares. CPAs have access to specialized information through many resources, including the AICPA and state CPA societies of which they are members. The AICPA regularly provides Tax E-Alerts, news updates, practice guides and checklists, and professional publications (e.g., the Journal of Accountancy and the Tax Adviser) to its members. There are a number of existing information outlets available to both preparers and taxpayers, ranging from IRS press releases to the websites of the AICPA and other professional organizations. Much of this information is free and readily available to any taxpayer or tax return preparer. The IRS and Treasury Department should maintain the primary responsibility for taxpayer and tax preparer outreach; funding should be provided through the budgetary process, including the authorization of appropriate funding levels for the Office of Professional Responsibility.

We believe a meaningful component of the IRS's budgetary authority should be used to release public service announcements on how taxpayers can identify the proper, competent tax return preparer. In general, we are comfortable with the current level of outreach the IRS provides the public and applaud the special efforts of the IRS during the busy months of the tax return filing season. Moreover, the Service should provide a broad range of resources to preparers to ensure that information deemed important to the effective administration of the tax laws is well disseminated.

5. Should tax return preparers be subject to a code of ethics, and if so, what specific behavior should that code promote or prohibit? How would that code of ethics interact with existing ethical standards that may already be applicable?

The AICPA has developed and approved the Statements on Standards for Tax Services Nos. 1-8. These enforceable tax practice standards are in many ways conceptually similar to the scope of the Circular 230 standards. An excellent example is Circular 230 section 10.21 (knowledge of client's omission) and our current SSTS No.6 (knowledge of error: return preparation). While Circular 230 section 10.21 states that a practitioner "must advise the client promptly of the fact of such noncompliance;" SSTS No 6, paragraph 5 states that a "member should inform the taxpayer promptly upon becoming

aware of an error on a previously filed return." We strongly support the SSTS and Circular 230, and we view these sets of enforceable standards as providing meaningful guidance to CPAs in performing their professional responsibilities with respect to tax services. As stated earlier in this submission, we believe the public would benefit from making all tax return preparers subject to Circular 230 and oversight by the IRS Office of Professional Responsibility.

6. What, if any, responsibility should the firms or businesses that employ tax return preparers have for the conduct of the individuals they employ? Ultimately it is the individual's responsibility to comply with professional and legal standards. However, firms that employ individuals to prepare federal tax returns should require that employees satisfy the professional and legal standards imposed on federal tax return preparers, including compliance with practice standards sufficiently high so as to avoid employee exposure to penalties under sections 6694 and 6695. Firms should be able to rely on certification or confirmation by the employee that he or she is in compliance with professional and legal standards and, if the employee is a licensed CPA or other licensed professional, that the individual is in good standing with the state licensing authority.

7. What, if any responsibility should tax return preparer professional organizations have for the education, training, and conduct of their members?

Similar to our response to the immediately preceding question, we believe ultimately it is the individual's responsibility to comply with professional and legal standards. Nevertheless, the AICPA strongly supports implementation of high professional standards for all tax practitioners. Our longstanding track record regarding high professional standards for CPAs includes the AICPA Code of Professional Conduct and our enforceable Statements on Standards for Tax Services. These standards provide meaningful guidance to CPA members in performing their professional responsibilities. Moreover, the AICPA is committed to member service and the public interest. Today, the CPA is viewed as a valued strategic partner and is considered an integral part of any individual, family, or organization's success. We prepare members to assume that role by providing a broad array of continuing education programs, training, services, and publications CPAs need to keep their skills at the top professionally, and similar roles are played by state and local CPA societies throughout the United States.

8. If tax return preparation services should be regulated, what, if any, special regulatory provisions should be made for individuals who are already tax return preparers, licensed attorneys, certified public accountants, enrolled agents, or software providers? Certified public accountants, attorneys, and enrolled agents who practice before the IRS are subject to the rules of Circular 230; and they are subject to a rigorous licensing examination to obtain their professional status. Upon achieving their professional designation, CPAs, attorneys, and enrolled agents are already subject to regulation and standards imposed upon them by state boards of accountancy, state bars, court systems, and Circular 230; and they generally are subject to annual continuing education requirements. These tax professionals incur significant costs in both obtaining and maintaining their professional status, including their ability to represent taxpayers before the IRS. We strongly advise against any result that would impose duplicative regimes on CPAs, attorneys, and enrolled agents.

9. What, if any, additional legislative, regulatory, or administrative rules should the Service consider recommending as part of its proposals with respect to the tax return preparer community? The AICPA does not believe that any additional legislation or regulatory authority is required with respect to standards of practice for tax return preparers. Through the use of the current penalty regime combined with an expansion of the ability of the Office of Professional Responsibility to monitor currently unlicensed return preparers, the IRS has the authority necessary to regulate all federal tax return preparers.

The IRS adoption of a rule mandating the use of unique identification numbers assigned to all tax return preparers will allow the IRS to more readily identify those preparers that chose to practice outside the boundaries of the Internal Revenue Code.

The use of a unique identification number by each preparer must be accompanied by enforcement of preparer standards by the IRS. Unethical or negligent tax return preparers are subject to a broad range of penalties. Examples of these penalties include those for the understatement of tax liability (IRC 6694), the promotion of certain abusive tax shelters (IRC 6700), and the aiding and abetting of the understatement of tax liability

(IRC 6701). Appropriate enforcement of these and other existing "preparer penalties" could be used to increase the ethics and quality of tax return preparers generally. We thank you for the opportunity to provide these additional comments on issues concerning tax return preparers. We would be pleased to further discuss the contents of these comments with you or your staff at any time. If you have any questions, please contact me.

Sincerely,  
Alan R. Einhorn  
Chair, Tax Executive Committee



From: Ronald E. Johns  
Sent: Monday, August 31, 2009  
Subject: "Notice 2009-60"

I am an Enrolled Agent writing in favor of having all paid tax practitioners being authorized or licensed (whatever is determined to be the best method) by the U.S. Department of Treasury (IRS). I believe strongly that all paid tax preparers who are not Enrolled Agents, CPA's or Lawyers need to be authorized or licensed. I believe the best method for qualifying such individuals would be to develop an examination process in concert with a third party test administrator (Le., similar to what is currently done to qualify 'Enrolled Agents'). A certain minimum test score would be required to be certified or licensed to receive payment for tax preparation. It might be of further benefit to qualify these individuals as to the types of tax returns they are qualified to prepare and receive payment for their services (i.e., certified for individual income only versus qualified to do all types of individual, corporate, partnership and estate tax returns). The tax clients deserve the best knowledge and service in tax preparation as they are paying to have their returns prepared correctly (Le., tax law) and accurately (arithmetically). In addition, with such licensing it should also reduce the amount of time the IRS spends on auditing returns prepared incorrectly. I also believe that Enrolled Agents, CPA's, and Lawyers should not have to qualify using this test as they are already required to have CEU requirements to maintain their credentials as put forward in Circular 230. Another reason I feel strongly about this authorizing / licensing is the result of my firm recently buying a tax practice in late 2008. The owner who had done taxes and accounting for many years is a very honest person. However, because he had not gone to tax update classes to refresh his knowledge and learn about new tax law changes, he was more susceptible to make mistakes in preparing taxes. In addition, he did most of his returns by hand which created many arithmetic mistakes on the returns. He did not trust doing the tax returns using computer software and this resulted in too few of his returns being sent via e-File as now required by the IRS and State of Michigan. I trust that this information will help in your review of this subject.

Respectfully submitted,  
Ron .Johns, EA

From: Linda

Sent: Monday, August 31, 2009

Subject: Notice 2009-60 (tax preparers)

I am responding to your request for information on how to make tax preparers and taxpayers more compliant, honest and ethical. I have been working in the tax preparation field for over 25 years. I have a B.S. in Math and I took H&R Block's tax course before I started working. I am not a CPA nor an enrolled agent, but one of my bosses is a CPA and the other an enrolled agent, with the added credentials to represent clients in Tax Court. When the firm began, we acted as a computer processing service for other accountants, in addition to our own clients. We processed about 8,000 returns per year during the 80's and 90's. Therefore my perspective is based on knowing how many different preparers operate, as well as the 700+ returns our office prepares, not including business tax returns. The most important advice I can give is that Congress needs to scrap the tax code and devise something much simpler (of course tax preparers don't want it too simple or they would be out of business). You are NEVER going to have over 60% compliance (and that figure may be high), if the tax code stays as it is. I am an honest person and I want to follow the law when preparing returns. I continually run into situations where I don't know how to handle them. If I don't know the answer (the issues usually involve K-1's from partnerships, trusts and S-corps), my bosses usually don't know either. Searching the IRS website or other publications is a frustrating and time-consuming experience, and rarely leads to answers that I can understand. My experiences with other CPA's and Lawyers who prepare taxes, is that they do what is expedient, or what yields the result they want, and they don't have time to care if it is correct. Many of them don't even know the rules on simpler issues. The biggest problem with K-1's, is that accountants who prepare the business returns don't know what the heck they are doing (often they just don't know how to correctly input the data in the tax program). Many K-1's are simply incorrect, which makes the tax preparers job more difficult. The statements with additional information rarely give us the information needed to enter the data correctly on the individual's return. Add to that K-1's from investments such as "hedge funds" and "private equity firms", which may require hundreds of pages of special disclosure forms that must be filed with the returns and cannot be e-filed. We can't charge people enough to pay for all the time involved to do all this and do it correctly. Accountants find ways to cut corners to save time, which compromises the integrity of the return. We sure can't call the IRS and ask complicated questions. All those people know how to do is read from a script, with no ability to interpret. It is even more frustrating when the IRS sends out notices to clients that are difficult to interpret. The IRS calculations on CP-2000 notices are incorrect 98% of the time. Calling the IRS on behalf of the client is also frustrating. If we designate everyone from the "firm" to be the designee on the return, some IRS people won't talk to us. If the actual preparer is out of town, or sick, or too busy to spend time on the phone, it is helpful to have another person in the office deal with the issue. I get frustrated when the IRS won't deal with me, even if I am the one who actually prepared the return. The latest problem I had was when I had the client sign a Power of Attorney with my name and my boss's name as the agents. The IRS person refused to talk to me because I wasn't an enrolled agent. Why should that matter if the client wants me to speak for them? I have found, over the years, that I know a lot more than many of the CPA's and Enrolled Agents out there, and I am more willing to spend the time to "get it right". Passing a test, taking CPE credit classes, or having some other license, is not a guarantee of anything. It makes me cringe when I hear about groups who are fighting to have all preparers licensed, as if that guaranteed the person would be knowledgeable or ethical. I can assure you that paying a fee, or passing a test, has no effect on competency or honesty.

Only about 10% of the clients we see tell us to prepare the return honestly and take no chances. The rest expect us to magically make their tax liability go away because they don't want to pay. Some clients will leave us if they feel they owe too much tax. Many times we have fired clients because they want us to do something illegal. When a new client comes to us and we check their prior years returns, we find errors and/or omissions 95% of the time. It doesn't matter if it was prepared by a CPA, the client, a friend, or a place like H&R Block. Everyone makes mistakes, including us. Sometimes the mistakes are honest mistakes, or a case of not knowing the law, and other times I see "fraud". I can usually spot the difference. The point is, the law is too damn complicated. As a last resort, I have sometimes tried to read the actual IRS code to find an answer. Most times I throw my hands up because there is too much legal language and constant references to other parts of the code. Who can understand that stuff??? If you ask ten preparers a question, you may get 10 different answers. A tax return should be an exact science, but in reality it is often a work of fiction. More often than not, this is due to confusion over the law, rather than an attempt to cheat. CONGRESS MUST CHANGE THE LAWS TO SIMPLIFY THEM or you will never get most preparers and taxpayers to be in compliance. Congress should be forced to prepare a few complicated returns to see what a mess they have made. I don't think they are capable of making anything simple. Everytime they try, it gets more complicated. The way things are now, you will never get the type of compliance you want. Most people are horrible record keepers. I try to educate clients on what info they need to save, but with some clients it is futile. Trying to get a cost basis on a stock or some other item that is sold can be nearly impossible for some people. Schools should teach students practical things like saving bought and sold slips from brokers, and year end statements. Many self-employed people need to be taught how to keep track of income and expenses for their business. They often expect us to pull numbers out of thin air. Preparers are dealing with an impossible situation. If we want to do the right thing, it is often impossible because no one knows what that is, and often doing it honestly often upsets the client if they think the taxes they owe are too high. Everyone wants a refund! Worst of all are the high penalties charged to clients and/or preparers for "honest mistakes". Taxpayers often don't give us all their documentation of income because they are either disorganized, don't open their mail, or don't know what they need to give us. Sometimes they don't realize they haven't received an important document. I can't count the number of times we have prepared a return and e-filed it, only to have the client send us additional items a day, a week, or a month later and we have to amend the return. We can't be fully compliant when Congress makes the laws too convoluted, we have idiots working at the IRS who are bound by idiotic rules (and they can't really answer questions), and we are under such time constraints that we often don't have time to do research because we would never get anything done.

Linda

From: Sandy Steinwedel  
Sent: Monday, August 31, 2009  
Subject: Notice 2009-60  
Attachments: Untitled  
CCPA:LPD:PR (Notice 2009-60)

RE: Comments to IRS Notice 2009-60

The Maryland Society of Accountants has been active in the issue of Tax Preparer Licensing. Between the dates of August 6 and August 21, 2009 our Society conducted a survey of our members to determine our membership's response to the proposed licensing. Highlights of our survey are as follows:

1. 84% of our members believe that licensing is necessary.
2. 96% of our members believe that annual education must be part of the licensing program.
3. 90% of our members believe that ethics must be included in the licensing program.
4. 65% of our members believe that the IRS should be the issuer of the tax preparer's license. The designation must be different from an EA or CPA designation and education to the public about the differences between the three licenses must be done.

It is very clear from the responses received that the Maryland Society of Accountants members strongly support the licensing of tax preparers. It is the position of the Maryland Society of Accountants that all tax preparers be licensed.

A copy of the results of the survey is enclosed for your review. Please do not hesitate to contact the following members of our Society who worked on this project if you have any further questions.

Sandy Steinwedel  
Phyllis Burlage  
Betty Kohls Stehman

#### MARYLAND SOCIETY OF ACCOUNTANTS, INC. SUMMARY OF TAX PREPARER REGISTRATION SURVEY

The Maryland Society of accountants sponsored an e-survey to determine what the membership thought about the tax preparer license issue. There were 13 questions that had answers provided and 2 questions that were essay in nature.

The 13 answer-provided questions dealt with the following issues:

- Who should be Licensed/Registered,
- Educational Requirements,
- Testing and Competency Issues,
- Ethics Requirements,
- Who Should Issue the License,
- Over the Counter Software, and
- Refund Anticipation Loans (RALs)

An average of 214 responses were received on the above 13 questions. The responses are summarized below. .

##### Who Should be Licenses/Registered

40% of the respondents want to see all preparers registered; another 44% want to see all preparers, except EAs & GPAs, registered. Thus 84% of the respondents believe that registration/licensing is necessary.

##### Educational Requirement

- 96% of the respondents believed annual education is necessary and
- 90% believed that I tax preparers, except EAs and CPAs, should have this annual requirement. (EAs and CPAs already have required annual education requirements for t eir licenses.)

##### Testing and Competency

- Approximately 69~ do Dot think an annual competency test is necessary,
- If a test is required, 43% thought everyone other than EAs and CPAs should be required to take the test. (BAs and CPAs have already passed a competency test.)
- 90% of the respon4ents believe there should be an ethics requirement

- 45% believe all preparers should have to pass an ethics test
  - 35% believe all preparers, except for EAs and CPAs, should have to take an ethics test (EAs and CPAs already have ethics requirements in their license renewal.)
- To summarize the respondents on this issue, 80% of our membership would like to have an ethics test requirement.

#### License Issuer

- 65% believe the ~ should issue the tax preparer's license.
- Many respondents also indicated in the essay section that they wanted to see a Grandfather Claus included in the requirement.

#### Over the Counter Software

68% believe there should be no limit on the number of returns prepared through over-the counter software.

#### RALs

89% of the respondents would like to see RALs eliminated.

The first essay question asked for comments on the Efile program. It did not specify in the question whether the question was pointed toward the Federal program or the state program. 102 comments were submitted on this question. The summary below is broken into two parts: Federal and Maryland.

#### Federal Efile Program

- The system is well received;
- There were 6 responses, almost 6%, that said they don't use it and also do not plan to use it ever.
- It is difficult to enroll in the program but once approved for the program, it is easy to use; I
- It should not be mandatory that preparers use Efile;
- The Free Efile program on various websites compete against the tax preparers/professionals who also offer efile. Tax Preparers/Professionals pay for the efile service whereas those who use the free service pay nothing. Some software companies charge for the service, others do not charge, and still other software companies charge by the form when efilng through them;
- Prior year returns and amended returns should be allowed on efile;
- Allow practitioners access to a taxpayer's estimated tax payments. This would save time for both the IRS and the taxpayer and the preparer and would improve a return's correctness;
- Expansion of system to include all forms;
- Concern about the volume of returns being processed this way in relation to the ability of the IRS'~ computer systems to handle the load.

#### Maryland Efile

- Maryland does not work as well as the federal system; needs lots of improvement;
- Multiple states cause problems for processing;
- Software companies do not get sufficient time to implement new law changes into the code before the start of the tax season;
- Maryland's mandatory rule is too strict. This could cause a loss of clients to preparers; i.e., a client does not want to efile.

The second essay question asked for comments on how the law should be implemented. There were 82 responses to this question. A summary of the comments follow.

- Sufficient notice time needs to be given to all preparer's who need to get licensed.
- The amount of time recommended for implementation varied from immediately to three years. Phasing in the process was a frequent response;
- All preparer's should have a license number. If the license is not registered with the oversight board, any return prepared with this number would be rejected by both the IRS and estate;
  - An even number of responses indicated that either the IRS or the state should administer the program;
  - Tax Preparer License number should be distinct to indicate it is different from a CPA or an EA designation.

- Stronger statement~ on the signature page to show:
  1. that, if the tax return has no preparer's signature present, the taxpayer did not pay for the return to be done; or
  2. If the return is self-prepared, the signature statement needs to include that the taxpayer understands the law and knows what he/she is doing.
- An educational component is essential in any program.

From: Tanya Cowan  
Sent: Monday, August 31, 2009  
Subject: Notice 2009-60

Liberty Tax Service recommends the following program structure:

Registration - All those who prepare and sign Individual Tax Returns should be required to register.

- Given the universality of this requirement, there should be no time lapse between registration and activation of fully compliant registrants.
- Those who prepare Individual returns on behalf of others should register with the IRS/oversight group, and retain that registration through the use of a unique identifier throughout their Tax Preparation career.
  - Anyone who allows their registration to lapse would be reinstated under the same unique identifier once they have completed any lapsed Continuing Education/Ethics requirements.
  - Registrants should be required to be in full tax compliance at all times.
  - Registration should include a \$100 fee paid for every three years of Tax Preparation, if an oversight group is used to implement this program.
  - Registration renewal should be staggered so that only a third of all registrants are due for renewal in any given year. If possible, the staggering method should be easy for Tax Preparers to remember (e.g., those with a Social Security Number ending in 0, 1 or 2 renew in the same year, etc.).
- The registration requirement includes those subject to Circular 230 (Circ 230) regulations, as well as all others who prepare Individual tax returns on behalf of others (whether or not they are paid to perform the work).
- Anyone who prepares an Individual return on behalf of another person should be identified to ensure

that high quality tax preparation services are being provided.

Examination - An initial examination should be applied to ensure a minimum level of competency for all unenrolled Tax Preparers.

- Those subject to Circ 230 regulations should be exempt from this examination.
- The IRS/oversight group should certify testing programs implemented by stakeholders to ensure that the exam questions and implementation method (e.g., making sure questions are current, making sure exam format presents questions in a dynamic way so that questions and answers cannot be memorized, etc.) are adequate.
- The exam only should have to be passed once, as is true of other professional groups (e.g., the CPA exam, the bar, etc.).

Continuing Education - All registrants should be required to complete 8 hours (standard 50 minute hours) of continuing education covering all tax laws in effect by 7/31 of each calendar year.

- Another 2 hours of Ethics instruction should be required from all registrants annually (Due Diligence instruction should qualify as Ethics Instruction if the program is approved by the IRS/oversight group).
- Circ 230 Tax Preparers should be able to apply these 8 hours of completed Continuing Education towards any similar Continuing Education requirements placed on them via Circ 230.
- Registrants should self-report their compliance with this requirement, and the IRS/oversight group should "spot check" compliance by requiring a small number of randomly chosen registrants to provide documentation that they have complied with this requirement.

Governing Body - Whether the governing body is within the IRS or is assigned to an external oversight group, enforcement of program requirements should be actively pursued.

- Enforcement is critical to ensure a level playing field in which all Tax Preparers and Tax Preparations groups are held to the same standard.
- The fees raised through registration should be used to implement a vigorous public outreach and education campaign.
  - Because ALL Tax Preparers will be held to the same standard, it will be easy for the general public to understand that anyone who prepares a return on their behalf will be required to sign their return and record their registration number on the return as well.

- The oversight group can require registered Tax Preparers to produce their registration card/certificate on demand, so that the Taxpayers are assured that their return was prepared by a registered Tax Preparer, and that the number on the return is the same as the number on the registration card/certificate.

Thank you,  
Tanya Cowan, CPA  
Director of Operations  
Liberty Tax Service



From: Myron Ledvina  
Sent: Monday, August 31, 2009  
Subject: "Notice 2009-60"

#### Myron's Tax & Consulting

I'm writing as a concerned tax preparer regarding the licensing of tax preparers. I've kept up to date as much as possible with the different meetings between the IRS and different Government Agencies as well as comments from the public forums. Under the proposal, unenrolled preparers will be subject to registration requirements if they prepare for a fee, a certain number of returns. Part of the requirements also include passing an initial exam that will cover technical knowledge of federal tax law, knowledge of ethical standards, and compliance with earned income tax credit. I take great pride in my profession which I have practiced for 30+ years. I also obtain continuing education credits (CPE) annually. It's impossible to provide competent service without keeping up to date. I already know that and adhere to professional ethics just like other professionals do. I believe I could lose my business if I have to wait to find out if I passed an exam on tax material I've been professional preparing for the past 30+ years accurately. I believe a exam requirement which would exclude CPA's, Enrolled Agents and Attorneys seems a bit unfair. If IRS is concerned with the fraudulent behavior of preparers then the test should include everyone that prepares returns. I'm aware that some of the fraudulent preparers also include attorneys or other accountants and not just unenrolled tax preparers. I attend annually update seminars and for the past 30 years have not had attorneys attend these seminars., in fact I pick up quite a bit of business from clients that had attorneys prepare tax returns and I need to amend to correct the tax return. If testing is part of the requirement to prepare tax returns then it should to be fair for all. I was tested when I was in college and passed with an overall 3.75 average and tested with A's on all tax return material. That was over 30 years ago, and feel it would be a great disservice to my clients and myself to in force a testing procedure I already passed in college. In fact when I graduated college back in 1978 I worked for an attorney. I prepared the return and he put his name on the tax return. I'm glad that changed later. It was mentioned in the last forum that attorneys are tested,,but are they tested on the IRS Tax Code? I believe they are tested on their professional trade knowledge and not on the Tax Code. My 1000+ clients would also be in jeopardy to scramble trying to find another tax professional they have placed their trust in for many, many years. Not to mention after being out of school for over 30 years to be subject to the various kinds of testing that I had in college. I have 30+ years experience (not learn-able in college)",and not sure if it can be translated to a test.

Rather than testing, why doesn't the IRS check who are the fraudulent preparers are and subject them to the testing. I've been following all the Tax Codes and Regulations since I started my self-employed business 30 years ago. As soon as IRS allowed the use of the PTIN I signed up for and received a PTIN. Another great way to check up on fraudulent tax preparers. That number is only usable by IRS and they can track our records with it. Check my record, I guarantee you will find an excellent record and following all IRS rules and regulations. I also signed up and received permission from IRS to be an Electronic Return Originator (ERO) and was finger printed to make sure of my clean record. This testing also appears to be discriminatory to the unenrolled preparers. That puts me at an unfair disadvantage jeopardy with my competitors. I prepare returns professionally at a reasonable cost for my clients for many years. The cost of testing for the government and for the small business owner is another consideration. This additional cost and testing may either be passed onto the consumer or it may drive small businesses out of business. What other profession or business is subject to such burdensome regulation and added expense? They are tested prior to being able to to perform the duties of their profession. I've done that as well and yet still I'm considered as an unenrolled tax preparer. After finishing college I did take the EA exam in Milwaukee and did receive a 94.3% correct on the first day of the exam but chose not to compete in the partnership or corporation testing process as I was never going to prepare partnership or corporation tax returns, and yes I failed when I didn't show up for the second day of exams on Ptr's and corp's. I knew my individual and small business (Sch C) tax info and chose not not to practice my profession with Ptr's & corp's. I appeal to you to address the inequity of the provisions in this projected bill that will unfairly regulate my livelihood. I request that an amendment be added to grandfather existing preparers with 20 or more years experience and have had a excellent record with IRS, not have to take the exam and only test future

preparers but still require CPE credits annually as a requirement. That is something I have always believed in. Younger preparers probably won't mind the tests as when they finish college, they are used to the testing procedures and tricky questions as such. After 30 years, I'm not sure the test would be fair to us all. Another thing that may be tested is all types of businesses, whereas I do not and have never prepared partnerships or corporations and feel I'd fail if these questions were based on someone who does prepare corp and ptr returns. I refer these types of returns to other tax professionals to prepare. I know my limits.

In conclusion, I'd like to say

Sincerely,  
Myron Ledvina

From: Claudia Stanley  
Sent: Monday, August 31, 2009  
Subject: Notice 2009-60

I am a CPA and an Enroll Agent, practicing in Fresno, California. I serve approximately 700 individual and 60 business entities in my practice. Several years ago, after practicing tax and accounting for 20 years, I took the EA exam so I could lawfully serve my out-of-state tax clients. I hold a minority opinion - that anyone signing a tax return for hire, should meet minimum testing standards. In my opinion the EA exam adequately represents that minimum testing standard. There is a prevalent misconception that I would like to address. To think that you perform some public service by creating various levels of practitioners is incorrect. You cannot license or otherwise authorize some individuals to go out and prepare 'simple returns' only. In today's society, you cannot open your doors to the public and not expect people to walk in with complicated circumstances. Just determining what the filing status should be and who is entitled to claim which child is one of the most difficult tasks. While a practitioner may not need to be an expert in all areas of taxation, they at least must have the skill to recognize when an issue exists. Over the years, many of my clients previously had their returns prepared by an unlicensed preparer, or by a CTEC preparer (California's registration of otherwise unlicensed preparers). Many of these clients were inadequately served by those who were unlicensed or minimally licensed. These taxpayers lost their rights, over or underpaid their taxes, and incurred needless expense and stress because the person preparing their return didn't know what they didn't know. My fellow CPA's have long been exempted from any Federal and State testing or registration. Let me tell the dirty little secret of our trade. Just because we have those 3 letters after our name doesn't mean we've possess the skill to prepare tax returns. All our training and education was in accounting. We are not required to take a single hour of continuing education in taxation to maintain our license. Of course, most of us recognize our shortcoming and seek training and continuing education. This is not the public's perception. The public believes CPA's to be experts at taxation. I strongly urge you to require excellence from all tax preparers. Require all of us to pass the EA exam if we wish to sign tax returns. If a preparer cannot or has not passed the exam, they should be adequately supervised by someone who has met this standard. In all the years I've practiced, I've never seen taxation become simpler. Taxation only becomes more and more complex. All the more reason to set the standards high. We owe it to the public.

Sincerely,  
Claudia Stanley, CPA, EA

August 31, 2009

Internal Revenue Service  
CCPA:LPD:PR (Notice 2009-60);

Re: Comments on review of issues concerning tax return preparers

H&R Block appreciates the opportunity to comment on the review of issues concerning tax return preparers which is focused on (1) increasing taxpayer compliance and (2) increasing tax preparer performance standards. As the nation's largest employer of tax return preparers (approximately 120,000) that prepares more than 21 million returns annually, H&R Block is well positioned to offer an informed perspective on the tax preparer community.

For many years, H&R Block has strongly supported legislative efforts to improve the training, professionalism and ethics among all tax preparers, and we stand ready to work actively with the IRS to assist in this timely and important review. This document presents our views regarding this important initiative and also includes our recommendations for your consideration.

#### Guiding Principles

We believe this review should result in the creation of a credible, enforceable regulatory program for the tax preparer industry, and we strongly suggest that the IRS consider the following five critical operating principles that must form the foundation of this program:

1. There must be a strong enforcement mechanism for this program with sufficient resources to ensure the long term resilience and credibility of the compliance regime. Without enforcement, this new program will be meaningless and could mislead taxpayers who believe that standards are being enforced.
2. Tax preparers must demonstrate a minimum level of income tax knowledge competency.
3. Taxpayers need to have assurance that they can trust the person/program to prepare their taxes with the highest ethical standards. Thus, training and demonstration of such high ethical standards are critical elements.
4. There must be a strong public awareness campaign to increase the education of the taxpayer community regarding this program. Taxpayers need to be informed of the existence and benefits of this new regulatory program, along with any limitations of the program.
5. This program should not penalize or bring additional burden to the taxpayer without cause. The focus of this program should be the regulation of the tax preparer.

To be successful, the new regulatory program must raise the professional and ethical standards of the tax preparation profession by creating the strongest possible enforcement mechanism to ensure compliance.

#### Key Program Design Elements

The new regulatory program should contain the following design elements to conform with our suggested guiding principles:

1. The administering body with the responsibility of the program should be granted the ability to create, amend, implement and enforce the rules, and it should be funded primarily through a reasonable, annual assessment on the regulated preparers.
  - Enforcement, flexibility, efficiency and cost effectiveness are key. We believe the most important criteria for the administering body are: (1) long term resilience supported by sufficient and sustained enforcement and administrative resources, (2) flexibility and the ability to quickly respond to emerging issues in the tax preparation industry and (3) operational efficiency and cost effectiveness.
  - We believe the administering body that best fulfills these criteria is a Self Regulatory Agency ("SRO"). A key characteristic of the SRO is that it would have a singular, private-sector based focus and would be funded by entities it oversees, rather than being another arm of the government that could be vulnerable to the congressional appropriations process and government agency budget pressures. Since the SRO would be established in the private sector, it would have sufficient resources to attract and retain a talented, diverse staff from the regulated industry and could establish a governing board that would include expert senior staff from the IRS; we suggest that the IRS should have some oversight responsibility for the SRO.
  - Coordination is crucial. The SRO should coordinate with other existing standard -setting bodies (e.g., OPR, AICPA, ABA, etc.) to produce efficiencies and prevent double-jeopardy or inconsistent standards for tax preparers.

- The SRO would be responsible for developing and maintaining the public awareness campaign to educate the tax paying community.

2. The program should apply to (1) all individual income tax return preparers who either (a) sign the return or (b) prepare the return in situations where no one signs the return as the tax preparer, and (2) software developers (to some extent) including:

- Paid-preparers and preparers via organized volunteer organizations.
- Circular 230 and non-circular 230.

The focus should be on those individuals or entities who hold themselves out to the public as an income tax preparer (irrespective of whether paid or part of a volunteer organization).

3. The focus should be on federal individual income tax returns.

- Include the 1040 series and its related forms and schedules.
- Ensure the establishment of nationwide standards for the benefit of all taxpayers. Toward this end, we would expect that any federal program would supplant any state program related to the preparation and filing of federal tax returns.

4. A combination of examination and continuing education is critical to demonstrate a minimum level of competence.

- Require an initial examination to demonstrate a minimum level of competence in the areas of income tax knowledge, tax administration procedures and ethics. Since the Circular 230 practitioners would pre-qualify based upon their existing testing and ethics programs, we believe they should not be subject to this initial exam.

- Require continuing education to demonstrate an ongoing level of competence in the areas of income tax knowledge, tax administration procedures and ethics. We prefer a requirement focusing on year over- year tax law and administrative changes. Ethics continuing education should be included, but perhaps administered less frequently than annually.

- Require other certification programs to be submitted for approval. To assist in the overall administration of this portion, we strongly urge the IRS to consider a process whereby tax preparation and/or education organizations (profit and non-profit) would submit their certification programs for qualification, thereby reducing the overall burden and potential cost to the program administrator.

5. The administrator and taxpayer population are able to identify those tax practitioners who have demonstrated the minimum level of competency for the preparation of income tax returns.

- Require registration. Each qualified tax preparer would register with the administrator and obtain a unique identification number. Preparing returns without a valid license would be prohibited and would subject the preparer to penalties.

- Require compliance check. Prior to registration, applicants should be checked for their own tax filing compliance and any prior or pending suspension/disbarment. If an applicant is not current on his or her own tax filing and/or if actively suspended/disbarred, the applicant will be ineligible for registration.

- Develop a reasonable funding mechanism. The cost of the registration should be sufficient to absorb the cost to maintain the administrator/enforcing agency.

- Design and implement a public outreach and awareness program. A significant public outreach, awareness and education campaign is essential. The education of taxpayers is important so they understand the parameters of the program.

#### Implementation Challenges

We are fully aware that creating a new regulatory entity for the tax preparation industry is a long term project that will create significant transition challenges. We recommend a phased-in approach that focuses on the critical foundation elements and leverages lessons learned from Congress and other regulatory bodies: (1) identify the population first via registration and fee assessment (2) implement competency requirements and (3) enforce the requirements. With respect to software developers, there should be a continued effort to define the appropriate level of requirements. Continued partnership with the industry stakeholders will be necessary to ensure continual evaluation and refinement of this program.

Finally, it is important that we collectively understand how to measure the success of this new program. Ultimately, the program should increase the accuracy and integrity of returns filed with the IRS, including key indicators such as decreased amended returns, decreased examination findings, decreased taxpayer notices, etc. It will be important to understand how success will be defined and measured throughout the process. The most important factor for judging success will

be whether we conclude that this program has enhanced taxpayer protections and strengthened the standards of the tax preparation industry.

In conclusion, H&R Block appreciates the opportunity to submit comments on Notice 2009-60 Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance. We applaud your initiation of this project and look forward to partnering with the IRS and industry stakeholders as the process moves forward. Please do not hesitate to contact us if you need further clarification or explanation of our submission.

Thank you for your consideration.

Sincerely,

Russ Smyth

Executive Officer and President, H&R Block

From: Isberg, Pete  
Sent: Monday, August 31, 2009  
Subject: Notice 2009-60 Comments

Attachments: Final NPRC letter re Notice 2009-60.pdf

Please accept the attached letter as the input of the payroll services industry (AKA Reporting Agents) in response to Notice 2009-60.

The National Payroll Reporting Consortium ("NPRC") represents businesses that provide payroll processing and employment tax services to employers. NPRC members ("Reporting Agents" in IRS terminology) serve over 1.4 million employers, representing over one-third of the private sector workforce. Reporting Agents have long served an important role in our nation's tax collection system as a conduit between employers and the IRS. Reporting Agents improve the efficiency of IRS tax collection and improve tax compliance.

We appreciate this opportunity to provide background on the Reporting Agent industry and existing IRS regulations covering the industry. We would be happy to meet with the IRS to discuss the issues presented in the letter and answer any questions you may have. Please call me at (610) 827-1591 if we can be of assistance.

Pete Isberg

National Payroll Reporting Consortium, Inc.

Re: Notice 2009-60

Gentlemen:

We are writing to respond to Notice 2009-60 on behalf of the payroll services industry (AKA Reporting Agent industry). We have discussed this initiative with a number of IRS officials, and understand that the Service is considering a broad array of alternatives to improve accountability, knowledge and performance standards for all tax preparers. The measures under consideration include registration and licensing, initial and periodic testing for competency and knowledge of tax law, and continuing education, among other things.

The National Payroll Reporting Consortium ("NPRC") represents businesses that provide payroll processing and employment tax services to employers. NPRC members ("Reporting Agents" in IRS terminology) serve over 1.4 million employers, representing over one-third of the private sector workforce. Reporting Agents have long served an important role in our nation's tax collection system as a conduit between employers and the IRS. Reporting Agents improve the efficiency of IRS tax collection and improve tax compliance.

This letter will provide background to explain why payroll service providers (Reporting Agents) are unique among those whom the IRS may consider "return preparers". This question arose recently as the IRS was developing Return Preparer Penalty regulations<sup>1</sup>, and the IRS confirmed at that time that Reporting Agents were not considered return preparers in that context. We believe that the substantive concerns that the IRS is trying to address through this new initiative are similar, and that existing IRS regulations regarding Reporting Agents should be strengthened as recommended by the NPRC and other industry associations<sup>2</sup>

• Reporting

Agents should not be included in any broad new oversight provisions designed for individuals who are tax preparers, advisors or other tax professionals, for three reasons:

1. Reporting Agents do not provide tax advice to their clients, but rather, provide employment tax deposit administration and return filing services that are merely part of a comprehensive suite of payroll services that are administrative in nature. It is well established that tax preparation services of a merely mechanical or clerical nature are regarded by the Service as appropriately outside the scope of Circular 230 and similar oversight administered by the IRS Office of Professional Responsibility.

2. The IRS initiative described in Notice 2009-60 seeks to gain improved control over tax professionals by establishing registration and licensing requirements. Reporting Agents are already subject to IRS oversight in the form of registration, electronic filing requirements, regular

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<sup>1</sup> Treasury Decision 9436; 73 F.R. 78429-78465, December 22, 2008. See the attached appendix for excerpts.

<sup>2</sup> NPRC letter dated May 16, 2008 Re: Notice 2008-47 Recommendations for 2008-2009 Guidance Priority List

reporting of new and terminated clients, and suspension for failing to comply with any applicable regulations, among other things. Consequently, the IRS already maintains registration information for Reporting Agents and their clients. It is not necessary to create a separate registration and licensing regime.

3. The measures under consideration include initial and periodic testing for competency and knowledge of tax law, as well as continuing education. These types of measures apply well to individuals who are return preparers and other tax professionals, but not to Reporting Agents. Each of these elements is explained in more detail below.

### **Background**

Reporting Agents are authorized by Form 8655 to sign and file employment tax returns under applicable Revenue Procedures 2007-38; 98-32; 99-39; and 2001-9. Form 8655 and these Revenue Procedures were developed to enable Reporting Agents to sign and electronically file employment tax returns on behalf of employers. These employment tax returns generally consist of total tax liabilities provided by clients through their payroll input, and clients remain solely responsible for the accuracy of their input.

In a typical Reporting Agent-client relationship, the proper understanding and accurate application of the employment tax laws and regulations remain the client's responsibility.

Reporting Agents' customer service staff are not trained to assist clients in tax matters, other than knowing how to use the systems of the Reporting Agent in order to achieve intended payroll and payroll-related tax results. Clients who ask questions regarding tax laws are typically referred to their attorneys or tax advisors.

Reporting Agents generally are not covered under Circular 230, which contains rules governing attorneys, certified public accountants, enrolled agents, and other persons who represent taxpayers before the Service. Circular 230 practitioners advise clients as to the proper application of the tax laws. Reporting Agents, in contrast, exercise no judgment or discretion in terms of the appropriateness of client determinations.

Section 7701 (a)(36), as amended by Pub. L. No. 110-28, defines the term "tax return preparer" and provides exceptions to this definition. Among the exceptions, the statute states that "[a] person shall not be a 'tax return preparer' merely because such person -- (i) furnishes typing, reproducing, or other mechanical assistance ... " (this exception is restated in Treas. Reg. § 301.7701-15(d)(1)). The concept that "return preparers" are individuals who provide advice with respect to the preparation of a taxpayer's return, and not merely mechanical assistance, also is apparent in Treas. Reg. § 301.7701-15(a)(1) which states that "[a] person who furnishes to a taxpayer or other preparer sufficient information and advice so that completion of the return or claim for refund is largely a mechanical or clerical matter is considered [a] tax return preparer, even though that person does not actually place or review placement of information on the return or claim for refund." Thus, the term "tax return preparer" connotes an individual who provides tax advice or otherwise assists a taxpayer with the application of tax law to their circumstances in formulating a tax return.

The legislative history of section 6694 similarly demonstrates that individuals who provide only administrative or mechanical assistance to taxpayers with respect to the preparation of a return are excepted from the definition of "return preparer". Specifically, the Senate Report states that "a person is not considered a preparer merely because that person furnishes typing, reproducing or other mechanical assistance in preparing the return. Thus, a person who provides a computerized service for filling out returns from information supplied by the taxpayer or advisors of the taxpayer is not considered an income tax return preparer if the processing done by such person is limited to mechanical calculations and processing." See, S. Rep. No. 94-938, at 352 (1976).

Revenue Procedure 2007-38 provides that Reporting Agent authorizations do not permit the Reporting Agent perform any acts that constitute representation of the taxpayer within the meaning of § 601.501 (b)(13) of the Statement of Procedural Rules. The Reporting Agent authorization, Form 8655, clearly limits services provided to electronically filing employment tax returns, making specified tax payments, and responding to certain IRS notices relating to the authorization granted.

Reporting Agents do not maintain operations or procedures to contact clients and challenge their inputs for payroll processing. For example, with respect to worker classification, employers are responsible for determining whether workers are employees or independent contractors for



federal tax purposes. Reporting Agents are unaware of the facts and circumstances at client worksites that relate to this determination, and are not trained to interpret the applicable rules and make determinations with respect to worker classification. As a result, Reporting Agents do not assist clients with or challenge such determinations.

Thus, Reporting Agents are not authorized to render advice or exercise any discretion or independent judgment as to the client's inputs, or to alter the payroll information supplied by their clients. Rather, the client reports its payroll information to the Reporting Agent, and the Reporting Agent is contractually obligated to process the client's payroll using the information supplied by the client. Clients are solely responsible for properly interpreting the law and supplying accurate information to Reporting Agents.

#### **Periodic Testing**

The measures under consideration within this initiative include initial and periodic testing for competency and knowledge of tax law, as well as continuing education. These concepts apply well to individuals who are return preparers and other tax professionals, but not to organizations such as Reporting Agents, some of which are publicly held corporations.

Testing for competency and knowledge of every area of tax law would also be unnecessary and inappropriate. Reporting Agents carefully evaluate and implement every change to tax laws affecting payroll administration; however, individual employees of Reporting Agents should not be required to demonstrate knowledge of unrelated tax areas such as taxation of corporate income or even personal income tax preparation.

In addition, practically speaking, every tax determination made by a Reporting Agent (such as construction of tax withholding tables, display of various earnings on Forms W-2 and so on), is closely scrutinized by thousands of clients, and in some cases millions of these clients' employees, who have varying degrees of expertise and a direct interest in the outcome. Thus, clients quickly notify the Reporting Agent if payroll and tax withholding results are not what they expected.

#### **Summary**

Reporting Agents are already subject to IRS oversight in the form of registration, electronic filing requirements, periodic notice of client lists, and suspension for failing to comply with applicable regulations. The IRS already maintains registration information for all Reporting Agents as well as their clients.

Reporting Agents do not provide tax advice, and exercise no judgment or discretion in terms of the appropriateness of client determinations. Reporting Agents provide employment tax administration services that are in the nature of mechanical assistance and/or computerized services in electronically filling out returns from information supplied by the taxpayer. These services are limited to mechanical calculations and processing.

As mentioned above, the NPRC and other industry associations have recommended strengthening Revenue Procedure 2007-38 to require Reporting Agents to remit all tax funds electronically, and to make certain disclosures to clients. We recommend that the IRS focus on these expansions, which reflect the consensus of the industry as well as the support of the IRS Taxpayer Advocate and others within the Service who work with the Reporting Agent industry. We ask that any regulatory recommendations clearly reflect that Reporting Agents who do not provide tax advice as part of their service offerings, and who comply with the applicable Revenue Procedures referenced above, be specifically excluded from any new oversight provisions covering return preparers and other tax professionals under this initiative.

We appreciate this opportunity to provide background on the Reporting Agent industry and existing IRS regulations covering the industry. We would be happy to meet with the IRS to discuss the issues presented in this letter and answer any questions you may have. Thank you.

Sincerely,

Pete Isberg

National Payroll Reporting Consortium, Inc.

#### **Appendix**

Treasury Decision 9436

73 F.R. 78429-78465, December 22, 2008

Excerpts related to Reporting Agents:

Tax Return Preparer Penalties under Sections 6694 and 6695

(f) Persons who are not tax return preparers. (1) The following persons are not tax return preparers:

(viii) An individual providing only typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.

(6) Examples. The mechanical assistance exception described in paragraph (f)(1)(viii) of this section is illustrated by the following examples:

Example 1. A reporting agent received employment tax information from a client from the client's business records. The reporting agent did not render any tax advice to the client or exercise any discretion or independent judgment on the client's underlying tax positions. The reporting agent processed the client's information, signed the return as authorized by the client pursuant to Form 8655, Reporting Agent Authorization, and filed the client's return using the information supplied by the client. The reporting agent is not a tax return preparer.

Example 2. A reporting agent rendered tax advice to a client on determining whether its workers are employees or independent contractors for Federal tax purposes. For compensation, the reporting agent received employment tax information from the client, processed the client's information and filed the client's return using the information supplied by the client. The reporting agent is a tax return preparer.

From: Cay Lane  
Sent: Monday, August 31, 2009  
Subject: Notice 2009-60

I am writing to give my input on the pending proposal regarding additional rules for tax preparers.

I have been a tax preparer for over 20 years, focusing primarily on family & friends, averaging only 10-15 returns per year. I feel that I provide a valuable service to the people whose return I prepare, as they all fit in the category of taxpayer who just doesn't want to try to do their own return, even with the assistance of a computer software program, yet their return really is too simple to justify the expense of a registered agent or a CPA. I monitor updates to the tax code via professional publications, e-mail alerts from professional organizations, and independent reading of the IRS.gov website.

I operate with the utmost integrity and honesty, my ethical and moral code is stringent, and does not require outside classes or seminars to enhance it, at the end of the day, ethics, morals and honesty are an internal value anyway. I have always declared as self-employment all payments received for the preparation of these returns, even in the years that I made less than \$400.00, I did so because of my own moral code.

I strongly recommend that no additional regulations or requirements be put into place for the tax preparer community. We provide a valuable service for many individuals and do it at a reasonable price, however, many of us would be forced to either raise our prices or stop offering our services altogether if we are faced with burdensome regulations and requirements. The tax code itself is so complex that even the simplest return can be daunting, and we small tax preparers offer a comfort to those taxpayers who wish to avoid a large preparation fee, or the trauma of preparing their return themselves.

At a minimum, it is my recommendation that whatever proposal goes forward would include an exclusion for the small tax preparer-one who prepares less than 50 returns.

Thank you for your consideration in this matter.  
Cay L. Lane

From: HKM  
Sent: Monday, August 31, 2009  
Subject: 2009-60

Regulation is highly needed for the tax preparer community. The most novice of tax preparers should be of the most concern for cutting corners on taxing matters, and avoiding basic interview questions. Tax preparers and tax customers with previous claims of suspicion by IRS from prior years should be held accountable at higher level with less mercy.

I, as a ten year veteran tax preparer, welcome regulation that is consistent. The regulation should not avoid the tax customer who is ever so clever in answering interview questions from experience. A realistic approach should continue to place the burden on the tax customer to validate the information provided.

Sincerely,  
Hakim Ali  
HKM Tax Services

August 31, 2009

**Deloitte.**

CCPA:LPD:PR (Notice 2009-60)

Re: Comments on Notice 2009-60, Standards of Conduct for the Tax Return  
Preparer Community

Dear Sir or Madam:

Deloitte Tax LLP ("Deloitte Tax") is pleased to respond to your request for comments on Notice 2009-60, Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance. We support the efforts of the Department of Treasury and Internal Revenue Service to partner with the tax return preparer community to increase taxpayer compliance and ensure uniform ethical standards for all tax return preparers. Deloitte Tax and its professionals take very seriously the responsibilities and standards applicable to the tax profession. Our comments do not respond specifically to each question set forth in Notice 2009-60, but rather present our thoughts regarding suggested steps the IRS could consider that would accomplish the IRS' expressed objectives.

**Comments**

1. The IRS could require all tax return preparers to use a single identifying number on their prepared returns and require such return preparers to participate in continuing tax education courses.

It is widely recognized that tax return preparers are critical to facilitating compliance with the tax code. However, in the last few years, studies have questioned the competence of some in the tax return preparer community. For example, General Accounting Office ("GAO") and Treasury Inspector General for Tax Administration ("TIGTA") reports have found numerous errors in returns prepared by unlicensed, paid preparers at some commercial return preparation chains. These reports about the shortcomings of the tax return preparer community are indeed troubling. If the IRS were to take the two steps discussed below - requiring paid tax return preparers to use a single identifying number on the returns they prepare and requiring such tax return preparers to participate in tax continuing education courses - the IRS' ability to detect and sanction incompetent or unethical tax return preparers would be enhanced.

**A. Tax return preparers who sign tax returns should be required to use a single identifying number on their prepared returns so the IRS may better track preparers' behavior and enforce appropriate penalties.**

Numerous sources have recognized that the system by which tax return preparers identify themselves on the returns they prepare hampers the IRS' ability to enforce preparer penalties against the tax return preparer community. As reported by TIGTA, GAO and the National Taxpayer Advocate, the current practice of allowing tax return preparers to use one of three numbers to identify themselves to the IRS makes it difficult for the IRS to determine the total number of unique tax return preparers and then link those preparers with the returns they have prepared. Adding to the problem is the assertion in the reports that IRS data on tax return preparers is decentralized across more than twenty different IRS systems that are not integrated. Requiring the use of a single PTIN by tax return preparers, as well as making the necessary modifications to IRS data systems to allow efficient tracking of the PTINs, would provide the IRS with greater ability to enforce penalties for preparer misconduct, such as the lack of proper due diligence in Earned Income Tax Credit claims. The first step in any effort to address regulation of tax return preparers should be to better equip the IRS to monitor tax return preparer activity and gain a better understanding of the problem of incompetent preparers through the analysis of paid preparer data and return data, and take appropriate enforcement actions based on the results of this analysis. The IRS should use the statutory authority that it already has in section 6109(a)(4) to require one single identifying number to be used by tax return preparers when signing returns.

**B. All tax return preparers who sign tax returns should be subject to continuing education requirements.**

Coupled with the greater enforcement ability that a mandatory PTIN system would provide, a mandatory continuing education requirement for all paid tax return preparers would give the IRS and the public greater assurance as to the competence of the tax return preparer community. Deloitte Tax would support a proposal to require continuing tax education courses for all tax

return preparers, and the resources to support such a requirement already exist in the tax return preparer community. Most attorneys, CPAs and enrolled agents are already subject to continuing education requirements in order to maintain their licenses or credentials in good standing - a requirement that a certain number of hours should be related to tax matters should not be difficult for them to satisfy. The IRS has already approved numerous qualified sponsors of continuing tax education courses for enrolled agents, making the availability of such courses widely accessible to all tax practitioners. Professional organizations such as the American Institute of Certified Public Accountants, the American Bar Association, the National Association of Enrolled Agents, and the National Association of Tax Practitioners, all already offer and require their members to attend continuing education courses. The IRS could require a certain number of tax continuing education hours per year for all tax return preparers as a condition to applying for, and maintaining in good standing, the preparer's mandatory PTIN.

The compliance of tax return preparers with the continuing education requirement could be tracked by the IRS through the use of an annual representation submitted by the preparer to apply and maintain his or her PTIN.

2. The need for a new, separate self-regulatory organization to oversee the tax return preparer community is questionable.

The need for a new self-regulatory organization to oversee the tax return preparer community is questionable. We believe the IRS already has the legislative and administrative means to sufficiently regulate the tax return preparer community without the need for a new entity outside of the Office of Professional Responsibility ("OPR") or the IRS. If the IRS is able to enhance enforcement of preparer penalties as described above and expand OPR's oversight of the tax return preparer community to encompass all paid tax return preparers as described in more detail below, there would be little enforcement advantage to be gained from establishing a new regulatory regime. Deloitte Tax is also concerned regarding the creation of a new regulatory entity outside of the IRS given the heightened privacy and sensitivity of tax return information that is protected by section 6103. In particular, IRS delegation of enforcement functions to a SRO would be particularly worrisome given the access to return information that effective enforcement would necessitate, as well as the IRS' proven track record of maintaining the confidentiality of tax return information during administrative enforcement proceedings.

**A. Expanding Circular 230 to cover all paid tax return preparers would ensure that such tax return preparers are subject to the same uniform ethical standards.**

Instead of creating a new regulatory regime and self-regulating entity, the IRS should seek to expand the scope of Circular 230 so that it applies to all tax return preparers, not only professionals that meet the current definition of federally authorized tax practitioners ("FATPs"). Circular 230 already provides ethical standards that require FATPs to exercise due diligence, not charge unconscionable fees or enter into conflicts of interest. It also regulates the solicitation and advertisement of tax services, contains best practices for tax advice, and sets forth standards for tax returns, affidavits, and other documents submitted to the IRS. Requiring all tax return preparers to adhere to the standards in Circular 230 would satisfy the IRS' goal of ensuring that tax return preparers meet both uniform and high standards of conduct and allow for continuity of regulation for the FATPs that are already subject to Circular 230 standards.

**B. Any testing requirement applicable to the entire tax return preparer community would be difficult to implement as well as duplicative for licensed tax return preparers.**

The paid return preparer community is so diverse in its varying levels of professional experience, expertise, and credentials that developing a single test to measure competence would be extremely difficult. For example, how could a single test adequately gauge the competence of an unlicensed tax return preparer to prepare a relatively simple individual 1040 as well as the competence of a licensed CPA to prepare a complex estate tax return? If the IRS is serious about ensuring the competence of tax return preparers through a new testing requirement, it would need to develop multiple tests to test the different areas of expertise within the tax return preparer community. Moreover, Deloitte Tax questions the value of a tax competency testing regime. There is no proven link between competency testing and higher levels of tax return accuracy. Although a GAO report studying the tax return preparer regulations in Oregon suggested that Oregon's use of testing for its state-licensed tax return preparers may be a contributing factor to that state's higher-than-average level of accuracy on federal tax returns, the report also noted that there were several other states with higher-than-average accuracy that did not have any

testing regime for paid tax return preparers. Finally, licensed CPAs, enrolled agents, and depending on the state, some attorneys, are already subject to testing in tax matters in order to obtain their professional licenses. Subjecting these professionals to a second testing regime would be duplicative and burdensome and would not guarantee a higher level of competence among these professionals or necessarily lead to higher accuracy on the returns they prepare.

3. To the extent the IRS considers any additional regulation of paid tax return preparers beyond requiring the use of a PTIN or a tax continuing education requirement, FATPs and those directly supervised by FATPs should be exempt from such regulation.

If the IRS proceeds with a plan to regulate the tax return preparer community outside the context of Circular 230, then professionals that qualify as FATPs should be exempt from any additional regulation other than the PTIN and tax continuing education requirements. All FATPs are already subject to competency testing, the ethical standards of Circular 230, and in the case of licensed CPAs and attorneys, the ethical standards of a state board of accountancy or state bar.

These state ethical standards generally require professionals to act with integrity, exercise due care, perform competently, fully disclose any conflicts of interest, obtain client consent if a conflict exists, maintain the confidentiality of all client information, and disclose to the client any commission or referral fees. Further competency testing or an additional code of ethics would not achieve greater competence among this community of practitioners. Requiring FATPs to be subject to a new regulatory regime would also be a departure from previous legislative efforts to overhaul tax return preparer regulation. Proposed legislation introduced in the last several sessions of Congress focused on further regulation of unlicensed tax return preparers as FATPs are already subject to regulation. FATPs invest significant time and expense in obtaining and maintaining their professional status. Imposing a new layer of regulation upon these practitioners would be akin to penalizing them for the professional status they have already obtained.

**A. Tax return preparers that are supervised by FATPs should also be exempt from any additional regulation of paid tax return preparers.**

Because FATPs are subject to ethical standards that make them responsible for the work of those that they supervise, any exemption from tax return preparer regulation should apply to tax return preparers that are directly supervised by FATPs. In the case of accounting firms, state boards of accountancy require that all employees and owners of registered firms who are not CPAs be covered by the same rules that are applicable to CPAs. Most Deloitte Tax professionals that are tax return preparers are licensed CPAs or attorneys. In keeping with the firm's ethical obligations as a registered accounting firm, any federal income tax return preparer that is not a FATP is supervised by a FATP. Moreover, because Deloitte Tax is registered with numerous state boards of accountancy, as well as a member of the AICPA, all Deloitte Tax professionals, whether they prepare tax returns or not, are subject to the state accountancy ethical codes, the AICPA ethical code, and to continuing education requirements.

Deloitte Tax applauds the efforts of Treasury and the IRS to ensure that the tax return preparer community is held to high ethical standards. We are pleased to have had the opportunity to offer our comments on Notice 2009-60 and deeply appreciate your invitation to entertain comments submitted by stakeholders. If you have questions or would like to discuss our comments further, please contact us.

Sincerely,  
Alan R. Einhorn  
Partner  
Deloitte Tax LLP

August 31, 2009

CCPA:LPD:PR (Notice 2009-60),

Thank you for the opportunity to comment on the anticipated proposals for the oversight of the tax preparation community. The Illinois CPA Society is an organization with a membership of over 24,000 members. The Illinois CPA Society's membership is mostly comprised of Certified Public Accountants located in the State of Illinois. The members of the Illinois CPA Society have formed various committees and task forces to better serve its members and to promote professionalism in the accounting profession.

Among these committees are the tax executive committee and an ethics committee.

The Tax Executive Committee of the Illinois CPA Society has the primary responsibility to address the needs of the members of the Illinois CPA Society who are involved in the preparation of tax returns, either as members of accounting firms, sole practitioners or as in-house tax advisors. The organization of the Tax Executive Committee is reflected on Appendix A to this letter.

The Tax Executive Committee of the Illinois CPA Society has reviewed the various pronouncements made in connection with the proposals to provide more oversight and, after consultation with the Tax Practice and Procedures Committee of the Illinois CPA Society, submit the following per your request.

1. What types of individuals, entities, and professionals currently work as tax return preparers? How are their tax return preparation services currently monitored or regulated by professional organizations or the government? How could this monitoring and regulation be improved? The members of the Illinois CPA Society are involved in the preparation of tax returns. In addition, it is the experience of the members of the Tax Executive Committee that tax returns are prepared by certified public accountants who are not members of the Illinois CPA Society, by individuals who are registered with the Internal Revenue Service as Enrolled Agents and by attorneys. Each of the foregoing is subject to continuing education standards and can become members of various professional organizations.

However, we also understand that more than a significant number of tax returns are prepared by individuals who are not certified public accountants ("CPAs"), enrolled agents or attorneys.

The American Institute of Certified Public Accountants (the "AICPA") has promulgated a set of standards that all members of the AICPA are required to follow as a condition of their membership. However, we are not aware of similar standards that apply to the members of the professional organizations for enrolled agents or for attorneys. In addition, it is our understanding that for other preparers (i.e., preparers that are not CPAs, enrolled agents or attorneys) there is no national organization.

2. Is there a minimum level of education and training necessary to provide tax return preparation services? If so, who should be responsible for ensuring that a tax return preparer meets this minimum level and how should that be done?

The State of Illinois provides specific requirements for a tax preparer who is a CPA to obtain a license. In the State of Illinois, one year of experience is required to receive a license. However, the experience requirement does not require working specifically in the area of tax preparation. In addition, the State of Illinois requires 120 hours of continuing professional education every three years to maintain our professional license with at least four of those hours having to be in ethics education. (For CPA's that elect to become members of the AICPA, such persons are required to obtain at least 20 hours of continuing professional education for membership per year.) However, neither the AICPA requirements nor the State of Illinois licensing requirements require that these training hours include training in taxation or tax preparation.

We have observed that CPA's who are involved in tax preparation focus their required continuing professional education classes on tax preparation related courses. Moreover, CPA's are traditionally graduates of accredited universities and colleges. In addition, a portion of the examination to become a

CPA includes questions dealing with tax issues. Similarly, all Enrolled Agents are required to pass an exam in the area of taxation.

We believe that it would be beneficial for tax return preparers to be required to be subject to education and training requirements. We also believe that such training should be tracked in



terms of hours of training in the preparation of each type of tax return per licensing period.

Because members of the

Illinois CPA Society, members of the AICPA, attorneys and enrolled agents are already subject to mandatory continuing education requirements, it is unclear to us whether added training requirements for these types of tax return preparers is beneficial. Nonetheless, it is our opinion that for other tax return preparers, there should be an organization that should ensure that minimal training and education requirements are met.

3. Should tax return preparers be subject to a code of ethics, and, if so, what specific behavior should that code promote or prohibit? How would that code of ethics interact with existing ethical standards that may already be applicable?

As noted above, members of the Illinois CPA Society are required to participate in ethics training as part of their required licensing requirements. The AICPA and the Illinois CPA Society have adopted a Code of Ethics which apply to its members. We believe similar ethics requirements be imposed on all tax return preparers. At a minimum, all tax return preparers should be required to participate in ethics training on the subjects addressed in Circular 230. In addition, all tax return preparers should be subject to Circular 230.

The recent expansion of the penalties set forth in Sections 6694, 6695, 6700, 6701, 7407 and 7408 of the Internal Revenue Code is helpful in encouraging ethical behavior by tax return preparers. However, a code of ethics and a mechanism to monitor and enforce the code of ethics which applies to all tax return preparers is also needed.

4. What, if any, responsibility should the firms or businesses that employ tax return preparers have for the conduct of the individuals they employ?

It is unclear whether a requirement that any firm or business that employs tax preparers should be primarily responsible for the conduct of the individuals they employ is realistic. However, at a minimum, such firms and businesses should be responsible for setting up and monitoring a system of internal controls and training requirements for the tax preparers that it employs. In addition, each firm or business that employs tax preparers should have a PTIN for tracking purposes.

5. What, if any, responsibility should tax return preparer professional organizations have for the education, training and conduct of their members?

Other than enforcing its code of ethics and standards, it is unclear how any professional organization can be responsible for the conduct of its members. As noted above, the Illinois CPA Society has adopted a code of ethics for its members and has an ethics committees to address complaints against its members.

However, it is our understanding that there is not a professional organization for tax preparers that are not CPAs, enrolled agents or attorneys. As a result, for these tax preparers, there is no existing means for an organization to enforce training and ethical requirement of these types of tax return preparers.

The Illinois CPA Society and the AICPA offer this oversight over its members with respect to training requirements and conduct. We believe that similar types of oversight must be extended by some organization over those tax preparers not current subject to this type of oversight.

6. If tax return preparation services should be regulated, what if any special regulatory provisions should be made for individuals who are already tax return preparers, licensed attorneys, certified public accountants, enrolled agents or software providers?

We believe that the creation of a new and separate designation for tax return preparers would cause confusion in the minds of taxpayers who are seeking to hire a tax return preparer. As noted above, any licensure or designation needs to have minimum continuing education and training requirements and be subject to a code of conduct. However, we agree that there is a need to track all tax return preparers.

Unfortunately, the existing systems imposed by the Internal Revenue Service does not include such tracking. Accordingly, we suggest that one method to be considered as part of a larger oversight plan is to expand the existing system to track all preparers using a PTIN. Currently, a PTIN is not required for all preparers. We suggest all preparers be required to obtain a PTIN and be required to include it on every tax return that they prepare.

Requiring a PTIN without a corresponding training and code of conduct requirement would create adverse circumstances. Accordingly, if this PTIN concept is adopted, it should be included as part of a larger oversight structure that includes an exam similar to that currently used for enrolled

agents. Under this type of oversight structure, the more stringent requirements that currently apply to CPAs, attorneys and enrolled agents should remain in place. These preparers would be exempt from the testing and training requirements that would apply to preparers who are not otherwise subject to the requirements that apply to CPAs, attorneys and enrolled agents.

7. What, if any additional legislative, regulatory, or administrative rules should the Service consider recommending as part of its proposals with respect to the tax return preparer community?

As noted above, many tax return preparers are subject to comprehensive training and educational requirements and subject to codes of conduct. Many of the members of the Illinois CPA Society view being subject to the requirements imposed by the Society and by the State of Illinois as an external affirmation of the high standard to which they hold themselves. Adopting a national designation for tax preparers that fails to include similar comprehensive training and educational requirements and codes of conduct will create confusion among consumers. We recommend that any "licensing or registration" undertaken in connection with the Internal Revenue Service's plan should not occur unless it is accompanied by continuing professional education requirements on a yearly basis to demonstrate continuing competency in the existing tax laws. In addition, to encourage compliance with the enrollment of all preparers, there should be a penalty imposed on taxpayers that use a paid preparer, who does not sign the return and is not "licensed" or "registered" with a valid PTIN.

#### **Conclusion**

No single program or regulatory action can ensure ethical conduct by all preparers. However, a program that requires a sensible and reasonable education in ethical standards can have the effect of minimizing unethical activity. The use of Circular 230 as a standard of ethical conduct when included in a required education and training program, combined with an examination, such as that used for Enrolled Agents would be an excellent method of ensuring that all tax preparers are aware of their ethical responsibilities.

The Illinois CPA Society, on behalf of its members, thank you for the opportunity to comment on these matters and hope that the oversight program eventually adopted takes our thoughts into consideration.

Respectively yours.

Edward Hannon, Chair

Taxation Executive Committee

Illinois CPA Society

Statement of Luis Parra,  
President of Latino Association of Tax Preparers, Inc.  
Non for Profit Business Organization  
Under Section 501(c)(6) of the IRe

IRS Public Forum on Tax Return Preparer Review  
Submitted to CCPA: LPD:PR (Notice 2009-60),

August 31, 2009

Thank you for this opportunity to submit our opinion and share our views regarding the possible regulation of federal income tax preparers. My name is Luis Parra; I am the President of Latino Association of Tax preparers, Inc., a non for profit professional organization representing Latinos tax professional along New York State and other states. I am the CEO of KEY Accounting of New York, providing accounting and tax services to individual and business.

We support the proposal for register all tax preparers around the country.

Tax preparers are handling more sensitive information like not other "common" professions, for example: barbers, mechanic, plumber, real estate, and other and we do not have a valid license to do the business, except on few States with regulations about that.

Below the main ideas we have about the proposal:

**1.Registration of tax preparers:**

We agree with other expressed before and registration following opinion and testimonies we strong support the the next steps:

- a)The IRS may use the register of EFIN for identify tax preparers.
- b)The IRS may use the register of PTIN for identify tax preparers no registered with EFIN.
- c) The IRS must continue using the current regulations and procedures: Circular 230, Section 6694, and other.
- d)PTIN for everyone doing the business.
- e) Register all tax preparers, except those already registered under State regulations.
- f)Use the model of regulations of California, Oregon, Maryland and New York.
- g)The IRS may track all social security numbers and/or ITIN for make sure all tax preparers are in compliance with the tax system, including their businesses.
- h) The IRS may made public the list of the. Tax preparers registered and these banned.
- i) Issue of a "Certificate", "Seal", other proper identification to show to the public the designation.
- j)Registration fees: \$200.00.
- k)Renewal fees: \$300.00.

**2. Education:**

- a) Initial test based in knowledge of individual tax (for preparers only working on individual returns). To meet minimum standards in federal taxation matter.
- b)Initial test based in knowledge of business (for preparers only working on business returns)
- c) Ethics for everyone.

**3. Continuing Education:**

- a) Continuing education on Taxation and Ethics, meet minimum standards in federal taxation matter and change of law.
- b) At least 24 hours of live classes.

**4. Implementation:**

Initial period registration based in:

- a)Window period up to 2 years for initial registration and take the proper test.
- b) Lifetime registration and individual "identification".
- c) Renewal every 2 years (including proof of continuing education and tax compliance) .
- d) 1st tax season: 2012

**5.Penalties:**

- a)All tax preparers no registered in the window period, \$2,000.00 of penalties.
- b)After the window period: 180 days to register, including initial test; if not: \$4,000.00 of penalties.
- c) Failing to complete A&B, automatic suspension of the system.
- d)Tax preparers doing the business and not registered the IRS, after failing letter C, penalties of \$10,000.00 and possible criminal action.

**From:** Kerri Gibson Carpenter  
**Sent:** Monday, August 31, 2009  
**Subject:** Drake Software Comments on Return Preparer Review

Good evening,

Attached are the comments from Drake Software pertaining to the return preparer review. We appreciate the opportunity to contribute to our changing professional environment.

August 31, 2009

CCPA:LPD:PR (Notice 2009-60), Room 5203  
Internal Revenue Service

Re: Response to Proposed Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance Drake Software has provided software to preparers since 1977 and has been part of electronic filing since its inception. Currently, Drake has customers in over 30,500 locations across the U.S. and, to date, has processed over eight million IRS-accepted returns for 2009. We appreciate the opportunity to contribute to IRS initiatives to protect the integrity of the tax-preparer profession while serving the ever-increasing needs of the taxpayer.

Defining the tax preparer role

By definition, a tax preparer is a person who prepares, for compensation, all or a substantial portion of any tax return under the tax laws or any claim for refund of tax. In today's world, there can be many people who touch a tax return during its preparation life, who are compensated for their contribution to the tax return, but who are not the signing tax preparer.

These individuals can range from data entry operators to subject matter experts who contribute to a specific complex calculation, to junior members of a firm. It is important that the regulation of the tax preparer be applied to those who have an impact on the calculations of a tax return. This does not include those who serve in a clerical capacity.

Need for preparer licensing

Like most professionals, most tax return preparers are ethical, competent, and compliant in their chosen profession. However, the tax code is complex and ever-changing, as are the interpretations of tax law passed down from Congress, the judiciary, and the IRS. Knowledge is required because the tax code is complex; continuing professional education (CPE) is required because of the ever-changing interpretations and new law. In addition, preparers cannot rely on tax software alone to generate an accurate return; they must have a working knowledge of current tax law.

Preparer licensing may not deter certain individuals (those who intentionally prepare fraudulent returns or who exercise gross negligence) from continuing to prepare returns. With or without preparer regulation, disreputable individuals will continue to attempt to exploit the system. They should not be the primary focus of preparer regulation.

The focus of preparer regulation, then, should be on accountability and education. The biggest benefit in preparer licensing lies in deterring a certain subset of preparers, such as those who want to make extra money "on the side," or even as a small business, by preparing taxes, but who typically lack the necessary tax knowledge to do so. These preparers believe that data entry and a good software program are all they need to produce accurate and compliant tax returns. These preparers are not competent tax preparers; a legal requirement about tax knowledge would require them to become educated--<>r to no longer prepare returns.

Some professionals who provide tax preparation services have already completed widely accepted professional licensing that requires a working knowledge of tax law. In addition, they invest time and money to maintain a current working knowledge of tax law via CPE requirements. The organizations that administer these professional licenses also maintain a code of ethics or standards to which license-holders are expected to adhere.

The unlicensed preparer does not have an oversight board/body, may or may not have the knowledge to prepare an accurate and compliant tax return, may or may not invest time and money to stay current with the ever-changing tax code, and does not have a governing standard code of ethics or conduct. If a minimum requirement as proof of competence and knowledge is

instituted, taxpayers can have an increased level of assurance that the person they trust to complete one of their most important financial transactions is doing so accurately and correctly. With a greater percentage of tax preparers knowledgeable in the tax law, overall accuracy and compliance will naturally increase; this, in turn, can have a direct impact on the multi-billion dollar tax gap.

#### Methods of ensuring that preparers meet standards

There are multiple options for providing licensing and oversight of tax preparers. A single solution, however, is not likely to provide a blanket resolution. For knowledge and ethical standards, a multi-pronged approach, one that uses multiple venues, will present the best course for long-term success. Such an approach should include tax competency testing, CPE requirements, an improved ERO approval process, use of a single preparer identification number, leveraging of available data, and extension of Circular 230.

##### 1. Tax competency testing

Drake Software fully supports testing for everyone. However, we do not believe a "one size-fits-all" test is practical. A preparer's required level of tax knowledge should be tied directly to the demographic and market being served. It would merely place undue hardship on a preparer to require knowledge of an area of the law that does not affect the tax returns he or she prepares. We believe that a multi-tiered competency test--one based on the types of returns for which a preparer provides services--is needed.

The IRS could (1) develop a database that indicates the type of return a preparer is authorized to complete and (2) implement monitoring of tax returns submitted by all preparers. Such monitoring would ensure that preparers are completing only the types of returns for which they are authorized.

##### 2. Continuing professional education (CPE)

Most professional licenses include a CPE requirement in order to maintain a current license. A licensed professional who does not meet the minimum CPE requirements is subject to having their license suspended or revoked. The minimum requirement should be extended to encompass all paid preparers. The requirement type should be tied directly to the level of accreditation received under the multi-tiered competence testing.

##### 3. Improved approval process of electronic return originators (ERa)

Currently, only a small percentage of people who apply to be an ERa and obtain an electronic filer's identification number (EFIN) are subject to a full criminal background check. A tax return, regardless of its complexity level, is the most important annual financial transaction that most taxpayers complete. They trust a paid preparer with their personal, demographic, and financial information. They should have a high level of assurance that their trust is correctly placed. Ideally, all (or a higher percentage of) Era applicants should be subject to the full criminal background check.

##### 4. Standard preparer identification numbers

Currently, a paid preparer can use one of three identification numbers on the tax return:

- a. Social Security Number (SSN)
- b. Preparer Tax Identification Number (PTIN)
- c. Employer Identification Number (EIN)

The current acceptance of multiple identification numbers does not lend itself to a system that can easily identify the preparer as an accredited preparer. A single, uniform identification number should be required for all paid preparers. The preparer should be required to have this number on all returns he or she completes. Drake Software recommends that the IRS leverage the current PTIN system by requiring all paid preparers to obtain a PTIN.

A database of the identification numbers should then be created and used to authenticate the return preparer on all returns (electronic or paper) submitted to the IRS by paid tax return preparers.

##### 5. Leveraging available data

The amount of preparer data available to the IRS through the tax return submission process (electronic or paper) could be gathered and maintained in a database that collects data about the return preparer and the tax return being filed. This data could be leveraged to help the IRS detect potential fraud, gross negligence, unlicensed paid preparers who have not obtained the applicable accreditation, and other red flag indicators.

This preparer data could be used in monitoring paid preparer compliance with whatever methods are implemented as a result of the preparer-regulation process.

#### 6. Extension of Circular 230

Drake Software fully supports ethics regulation and education for all paid preparers. The IRS and oversight boards of professional licenses both provide codes of ethics and conduct for currently licensed tax professionals. However, these rules do not extend to cover non-affiliated preparers. In addition, the complexity and ambiguity of these rules can be confusing to even the most competent paid preparer. Compliance should be easy to understand and apply to daily processes and procedures.

Fraud occurs in basic tax returns (such as the 23% to 28% of erroneous EITC claims) as well as in complex tax returns (such as the recent USB tax fraud case). Fraud at all levels of tax preparation costs American taxpayers billions of dollars annually. Non-compliance with ethics rules should carry stiff penalties and have a very low threshold for tolerance.

Those who willfully exploit the tax system will continue to do so, but ethics requirements combined with stiff penalties would usher in a new level of deterrence.

In conclusion, Drake Software fully supports these initiatives and believes the timing is right for making these changes. Opportunities are great to have a positive impact on preserving the reputation of the tax profession, to work on closing the tax gap, and to make it more difficult for unscrupulous paid preparers to work "under the radar." However, extreme caution must be exercised to ensure that preparer standards are implemented in a way that has a positive impact on the industry and does not negatively affect the function of paid preparers, the IRS, and others involved in making our tax-filing system successful. We applaud the insight of the IRS to offer the public and those involved in the tax industry the opportunity to contribute to making this a positive and successful transition.

Best Regards,  
Kerri Carpenter, CPA  
Director, Tax Development  
Drake Software

August 31, 2009

CCPA:LPD:PR (Notice 2009-60)

Re: Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance

To Whom It May Concern:

I am writing from Woodstock Institute to comment on the Internal Revenue Service (IRS) Notice 2009-60 regarding standards' of conduct for the tax Return preparer community and increased taxpayer compliance.

Woodstock Institute is a fair lending, wealth creation, and regulatory reform organization working to advance economic security and community prosperity through applied research, policy development, and coalition building. Since 1973, Woodstock Institute has researched how financial institutions deliver products and services to low-wealth communities and has repeatedly called for stricter oversight of tax preparation services in Illinois and throughout the country and the prohibition of the sale of financial products connected with the tax preparation process.

This comment letter answers two of the nine questions posed by the agency. These two questions address the need for additional legislative, regulatory, or administrative rules to prohibit the sale of financial products connected with the tax preparation process, and the need for the IRS to register or license preparers, and establish testing and educational requirements. This comment letter will also illustrate the impact of refund anticipation loans on the asset-building potential of low-wealth people receiving the Earned Income Tax Credit (EITC) in the Chicago region,

1. What, if any, additional legislative, regulatory, or administrative rules should the Service consider recommending as part of "its proposals with respect to the tax return preparer community?

The IRS should ban refund anticipation loans to prevent abuses by paid tax preparer. The marketing and sale of tax refund loans and other financial products as part of the tax preparation process contributes to an unacceptable level of fraud. In 2004, then Director of the IRS Criminal Investigation Division's Refund Crimes Unit reported that 80 percent of fraudulent e-filed returns were tied to a refund anticipation loan or other refund financial product.<sup>1</sup> In 2005, the Chief of the Criminal Investigations Division told Congress that 75 percent of tax returns identified as questionable and/or fraudulent were associated with a refund anticipation loan.<sup>2</sup>

The IRS recognized this potential for fraud in opening a rule-making proceeding in 2008, asking whether the agency should write rules to restrict the sharing of tax return information to market refund anticipation loans, refund anticipation checks, audit insurance, and other financial products.<sup>3</sup> A key question was whether RALs and other tax financial products provide preparers with a financial incentive to inflate refund claims inappropriately.

Woodstock Institute submitted comments as part of this rule-making process, noting that the sale of refund anticipation loans and other credit and consumer products in conjunction with the preparation of taxes serves as an incentive to inflate tax refunds. In that letter, dated April 7, 2008, Woodstock strongly encouraged the IRS to enact rules that would prohibit refund anticipation loans.

2. Is there a minimum level of education and training necessary to provide tax return preparation services? If so, who should be responsible for ensuring that a tax return preparer meets this minimum level and how should that be done?

The IRS should register or license preparers, and require annual testing and at least 10 hours of continuing education annually. A wrongly or fraudulently prepared return can lead to a substantial tax liability, additional fees or penalties, or even criminal sanctions for taxpayers. Yet there is no licensing requirement or supervision for tax professionals who actually prepare tax returns for tens of millions of consumers.

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<sup>1</sup> Allen Kenney, IRS Official Shines Spotlight on E-Filing Fraud. 2004 Tax Notes Today 1304, July 6, 2004.

<sup>2</sup> Statement of Nancy J. Jardini, Chief, Criminal Investigation. Internal Revenue Service, *Testimony before the Subcommittee on Oversight of the House Committee on Ways and Means*, June 29, 2005, available at <http://waysandmeans.house.gov/hearings.asp?fonmode=view&id=2875>.

<sup>3</sup> 73 Fed. Reg. 1131 (Jan. 7, 2008)

Anyone can charge the public to prepare tax returns for whose accuracy the taxpayer is responsible.

Large national chain tax preparers - H&R Block, Jackson Hewitt, and Liberty Tax -- prepared about 20 million returns in 2007, while independent preparers prepared nearly \$9 million tax returns. The independent preparers range from licensed professionals, such as attorneys and certified public accountants, to any person who wishes to make money preparing taxes and selling third-party financial products, such as refund anticipation loans and refund anticipation checks. Too often consumers get poor value for their tax preparation dollars.

In 2008, several significant studies on tax preparation and the sale of refund anticipation loans were released by consumer groups and government investigators which illustrate a general lack of quality control or accuracy in tax preparation.

a. The Community Reinvestment Association of North Carolina (CRA-NC) in Durham, Community Legal Services of Philadelphia (CLS) and the Philadelphia Campaign for Working Families conducted 17 "mystery shopper" tests of paid tax preparers, with results analyzed by the National Consumer Law Center.

Several preparers made serious errors that significantly affected tax liability. Two testers were required to file amended returns to fix errors. One tester withdrew after the preparer advised him not to include investment income on a return, essentially recommending tax fraud. This tester told coordinators, "My experience with [the independent preparer] has been a scary one. I say that mainly because of the lack of confidence in the preparer's ability to competently complete our return .....<sup>1</sup>

b. Impact Alabama conducted "mystery shopper" tests of 13 tax preparers. Testers described themselves to preparers as parents with one or two children who lived with them less than six months of the year, which would not make them eligible for the EITC. Impact Alabama found that 11 of the 13 preparers incorrectly claimed the EITC. In addition, 10 preparers did not report income from other jobs such as babysitting, nine preparers did not report interest income, and 11 allowed testers to claim "head of household" status without being qualified for it.

None of the testers qualified for refunds, but each preparer figured a refund ranging from \$65 to \$6,247. Five preparers figured a refund of \$6,247 for a taxpayer who actually owed \$112 to the IRS.<sup>2</sup>

c. A Treasury Inspector General for Tax Administration (TIGTA) Preparer Testing Report in 2008 focused on the accuracy of returns prepared by paid preparers<sup>3</sup>. TIGTA auditors tested 28 preparers (12 commercial chains and 16 independent preparers) and found that only 11 (39 percent) of the 28 storefronts prepared an accurate tax return. Of the other 17 preparers (61 percent) who prepared the returns incorrectly, six contained misstatements and omissions that TIGTA considered to have been willful or reckless.

3. Refund anticipation loans should be prohibited because they decrease wealth and the asset building potential of low-wealth people and communities of color.

In addition to contributing to unacceptable levels of fraud during the tax preparation process, refund anticipation loans have a substantial, negative effect on wealth and asset-building potential of low- wealth taxpayers receiving the Earned Income Tax Credit, as well as other taxpayers and communities of color.

To illustrate the lost asset-building potential, Woodstock Institute analyzed the usage rates and geographic distribution of refund anticipation loans.<sup>4</sup> That analysis showed that:

a. The Earned Income Tax Credit returned \$903 million to working families in the Chicago region in 2002, with an average value of \$1,764 per recipient.

b. In the Chicago region in 2002, on average, 38 percent of all Earned Income Tax Credit recipients use refund anticipation loans to receive their refunds faster, paying \$48,282,872 million

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<sup>4</sup> Tax Preparers Take a Bite out of Refunds: Mystery Shopper Test Exposes Refund Anticipation Loan Abuses in Durham and Philadelphia, available at [http://www.nclc.org/issues/refund\\_anticipation/content/mysteryshopperJeporl.pdf](http://www.nclc.org/issues/refund_anticipation/content/mysteryshopperJeporl.pdf)

<sup>5</sup> Steve Doyle, Group Uncovers Tax Cheaters, Huntsville Times, Jan. 23, 2009.

<sup>6</sup> Treasury Inspector General for Tax Administration, Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors, Reference Number: 2008-40-171, Sept. 3, 2008, available at <http://www.ustreas.gov/tigtauditreports/2008reports/200840171fr.pdf>

<sup>7</sup> Feltner, Thomas, Reinvestment Alert 29: Refund Anticipation Loan Usage Rates Negatively Impact the Asset Building Potential of the Earned Income Tax Credit. Chicago, IL: Woodstock Institute, February 9, 2006.



in tax preparation and loan fees. That represents millions of dollars that could have been used more productively to attend college, start a business, buy a home, or save for retirement.

c. Refund anticipation loan usage is geographically concentrated, and in the Chicago region it is particularly high in south suburban Cook County. Of the top 15 Chicago region communities ranked by refund anticipation loan usage, nine of these communities were located in the south suburbs, which are predominately African American.

d. Across the State of Illinois, 53 percent of recipients who live in predominantly minority tracts use RALs compared with only 27 percent of recipients in predominantly white tracts. Similarly, 57 percent of recipients in low-income zip codes use RALS compared with 19 percent of recipients in upper-income tracts.

Due to the high incidence of fraud and the lack of oversight of the tax industry, I strongly encourage the IRS to prohibit the sale of financial products connected with the tax preparation process, and to register or license paid tax preparers, and establish annual testing and continuing educational requirements.

Sincerely  
Tom Feltner  
Policy and Communications Director

August 31,2009

CC:PALPD:PR (Notice 2009-60)

PricewaterhouseCoopers LLP

Re: Notice 2009-60 Request for Comments Regarding Regulation of Tax Return Preparers

PricewaterhouseCoopers LLP ("PWC") appreciates the opportunity to provide comments regarding regulation of tax return preparers in response to the request in Notice 2009-60. PwC supports the Internal Revenue Service's efforts to regulate currently unregulated federal tax return preparers. With respect to the request for comments in Notice 2009-60, we are writing to support the need for a registration number for tax return preparers, minimum standards of conduct, and minimum continuing education requirements. However, we urge the government not to paint all tax return preparers with the same broad brush and to craft a targeted regulatory scheme that does not impose additional or conflicting requirements on tax return preparers that are already regulated. The details of our comments are provided below.

#### Tax return preparer registration number

We support a single unique identifying registration number for tax return preparers, regardless of whether they are signing or nonsigning tax return preparers. Such a number will enable the IRS to identify those who it wishes to regulate. The PTIN seems a logical choice as many tax return preparers already have one.

The tax return preparer number should be coordinated with the existing framework requiring use of a CAF number on Form 2848 and an EIN (Employer Identification Number) to identify the firm on a tax return. If the PTIN is selected as the numbering system, the same PTIN should be used by a tax return preparer for the individual's career, and those who already have one should not be required to obtain a new number. In addition, a tax return preparer should be able to use their IRS tax return preparer number as their state tax return preparer number in states that have a registration regime. This will allow the IRS and the states to share information and coordinate regulation of tax return preparers.

While we support a registration number for tax return preparers, we believe that individuals who work under the supervision of a tax return preparer should not be required to obtain a number. Both the tax return preparer and the firm are responsible for the work performed by these supervised individuals under the existing regulatory framework, including the preparer penalties under sections 6694 and 6695.

Therefore, because the firm and the supervisor are already responsible for the accuracy of the preparation of the return, there is no need to require an individual who works under the supervision of a registered tax return preparer to obtain their own tax return preparer number. Because resolution of these issues is complex, we recommend a phased approach whereby the IRS could begin by requiring all individual US citizens and residents who are signing tax return preparers to obtain a number (or use their existing PTIN). We suggest also that in the first phase of this initiative, the signing tax return preparer would use this number for all purposes where a number is required by the IRS (e.g., on tax returns and powers of attorney). After evaluating this first phase, the IRS would be in a better position to determine whether and how to require nonsigning preparers to obtain such a number.

#### **Minimum standards of conduct**

All tax return preparers should be regulated under professional standards of conduct.

With some slight modification, Circular 230 could be used for this purpose. If written tax advice prepared by a CPA, lawyer, or enrolled agent is covered by Circular 230 (even if it is never made available to the IRS), tax return preparation should likewise be covered by Circular 230. Putting all tax return preparers under the umbrella of

Circular 230 would level the playing field between CPAs, lawyers, and enrolled agents on the one hand and those without such credentials. Some may raise a concern that by using Circular 230 to regulate all tax return preparers, the IRS will be modifying the longstanding rules regarding who can "represent" a taxpayer before the IRS (i.e., under a power of attorney). Under current rules, only CPAs, lawyers, enrolled agents, and in some cases, enrolled actuaries, can represent a taxpayer before the IRS. Circular 230 permits limited representation privileges if the criteria set

forth in section 10.3(c) are satisfied. Careful drafting of an amendment to Circular 230 to cover tax return preparers could address these concerns.

Alternatively, there could be two separate regimes. Practitioners currently subject to Circular 230 could have return preparation governed by Circular 230. All other preparers and their firms could be subject to a separate system. This separate system would replicate some of the requirements of Circular 230 and include standards on return preparation, communications with clients about penalties and disclosure, compliance with section 6694, due diligence, fair dealing with IRS, and "firm" responsibilities. However, practitioners and firms subject to Circular 230 should not be subject to another separate regime.

#### **Continuing Education and Educational Background**

We support the IRS establishing minimum continuing education requirements for tax return preparers. At the same time, we caution that the determination of what specific curriculum is appropriate for each tax return preparer depends on that preparer's area of practice. In addition, for tax return preparers who are already subject to continuing education requirements (e.g., under AICPA, state boards of accountancy, or state bar rules), the IRS should coordinate its rules so that federal tax continuing education requirements are satisfied by meeting the continuing education requirements of these other regulators.

We do not support requiring a minimum educational background. Tax return preparers engage in a variety of tax specialties that require various skills and knowledge depending on the complexity of the issue and the type of taxpayer involved. In addition, foreign nationals who come to the United States (on tour or permanently) may be involved in tax return preparation. Although these individuals bring unique and necessary skills to the tax return preparation process, they may not have traditional United States educational backgrounds. Thus, there is no uniform set of skills and education that indicates whether an individual is competent to prepare the types of tax returns that they are in the business of preparing. This makes it difficult to identify minimum education standards or establish a single test that will assess whether an individual is competent to prepare the returns they are engaged to prepare.

#### **There should not be a "one-size-fits-all" approach to preparer regulation**

The tax return preparer community is not a homogenous group. It is composed of a wide variety of domestic and foreign service providers with different business models, backgrounds, skill sets, and clients. Many tax return preparers are already highly regulated by the IRS, states, professional organizations, and internal firm standards, while others are completely unregulated. Thus, to successfully regulate federal tax return preparers, the IRS should assess each segment of the tax return preparer community to determine whether there are gaps in professional standards and how to fill those gaps. For the reasons described below, we believe many tax professionals and their firms are already adequately regulated, and therefore, new standards should not be imposed on this group.

Rather, the IRS should rely on existing regulatory schemes, including Circular 230 and state CPA and bar licensing requirements, to hold the firms and their tax professionals accountable for satisfying minimum standards of conduct and training.

In this regard, PwC as a firm is a member of the American Institute of Certified Public Accountants (AICPA), licensed by state boards of accountancy of the fifty states and jurisdictions like the District of Columbia, and subject to federal and state tax laws.

The firm and its CPAs are subject to discipline and sanctions by the individual state boards of accountancy for failure to comply with applicable professional and other standards that apply to the tax practice (state boards of accountancy monitor the firm's compliance with its requirements). Thus, PwC requires that its tax professionals comply with AICPA professional standards, such as the Statements on

Standards of Tax Services (SSTS), state boards of accountancy standards, Circular 230, and preparer standards in the Internal Revenue Code (e.g., section 6694 and section 6695) when preparing tax returns.

Further, PwC has its own professional code of conduct which includes minimum continuing professional education requirements for its professionals in compliance with the AICPA rules and a requirement that its professionals obtain the training necessary to competently perform the work assigned to them. In addition, PwC tax professionals who are licensed CPAs and lawyers must satisfy their own state licensing requirements, which may include additional continuing professional education beyond what is required by the firm.

An environment where both the IRS and each of the states regulate tax return preparers creates complexity and unnecessary impediments for otherwise compliant tax return preparers. As CPAs, we experienced significant difficulties in trying to satisfy different and often conflicting standards for education and training established by each state. Recently, however, almost all states have adopted uniform standards and enacted legislation to recognize CPAs licensed in other states that also adopt these uniform standards. Similar steps should be taken with respect to the tax return preparer regulation, and we would urge the IRS to take the lead in this effort.

In our view, because the IRS has limited resources, it should not create new standards for tax return preparers when Circular 230 and the preparer penalty regime already provide sufficient tools for regulation and enforcement. Rather, the IRS should bring all tax return preparers under the existing regulatory regime. Further, we recommend that the IRS rely on existing state boards of accountancy, bar associations, and professional organizations to monitor tax return preparer compliance with minimum standards of conduct and training requirements where they exist. In this way, the IRS will be able to focus its efforts on bringing unregulated tax return preparers under the Circular 230 regulatory regime. However, because regulation will not stop those who are unscrupulous or determined to remain untrained in the tax laws, the IRS must also step up enforcement tools such as sections 6694 and 6695 and injunctions to protect taxpayers and the fisc from these individuals.

Tax return preparers located outside of the United States

The IRS must also consider how any tax return preparer regulation will impact tax return preparers located outside the United States. In these cases, there are unique and difficult issues. Under current IRS rules, non-resident aliens are not permitted to obtain a PTIN. Instead they must obtain an EIN if they wish to electronically file tax returns. In addition, foreign credentials may not mirror US credentials, and the IRS's inability to enforce its rules in foreign jurisdictions must be clarified. Therefore, before regulating tax return preparers outside the United States, we recommend that the IRS address how non-resident aliens fit into the tax return preparer regulation that is to be developed.

We appreciate the opportunity to provide comments regarding regulation of tax return preparers. However, this is only one step in addressing the problem of unqualified tax return preparers. Simplification of the tax code is another important step.

Complexity in the tax law, exemplified by the five definitions of "qualifying child" depending on which benefit is being claimed, has led more taxpayers to engage paid tax return preparers and more difficulty for tax return preparers. By reducing complexity in the tax laws, more taxpayers will be able to prepare their own tax returns and more individuals will be able to develop the qualifications necessary to prepare returns.

Please feel free to contact Elizabeth Case at 202-414-1628. if you have any questions.

Very Truly Yours,  
PricewaterhouseCoopers LLP

From: Eunice Vargas  
Sent: Monday, August 31, 2009  
Subject: "Notice 2009-60"

Omaha, August 31, 2009

I would suggest the following requirements for a professional tax preparer:

- Individual that prepare taxes should be or have
  - English proficient in reading and writing
  - Tax preparers must pass an IRS sanctioned examination to demonstrate initial competency and then must take annual continuing education to maintain currency
  - Has a bachelor degree in Accounting, Business or Economic and concentration in accounting and taxation.
  - Every tax preparers should be insured bonded.
  - Each tax preparer should had an identification number with the IRS
  - Regulatory environment, Circular 230, and have ample incentive to follow well-established rules and penalized for violations.
  - Tax preparers should be American resident ( should have a green card) or American citizens.
  - Follow code of ethics and kept current every year.
  - IRS must provide a centralized authority (OPR) to provide oversight for all paid return preparers. That authority must have the necessary tools to provide outreach (educate the public and preparers) as well as to discipline preparers. The centralized authority must be able to sanction those who stray from the straight and narrow as well as permanently prevent from preparing returns those who flagrantly violate the rules.

IRS must be permitted to charge the newly regulated preparers, both for their initial examinations and for renewals. In order to be adequately staffed, the central authority must be permitted to retain these funds.

I worked in the area 68107 there are around 200 tax preparers and around 10% bilingual professional tax preparers, from this 10% just 1% follow a code of ethics. Of these 1% just one individual is a CPA representing a 0.005.

Most of 200 the tax preparers are unlicensed preparers without any professional association clear knowledge of tax law. The following are the fact I considered:

- Every year thousands of people take the tax class with franchise companies to prepare taxes, sometimes the classes are given in other languages different from English. As a result new tax preparers come to the street with the idea of been proficient in taxation without a clear understanding of tax law in English. This languages barriers united with the unclear understanding cause misinterpretation issues at the tax preparation such a different in an asset and expense, and hobby and business.
- Every year, a lot of people buy a tax software and start preparing taxes for a fee without training, knowledge or competence.
- The U.S. Treasury loses billions of dollars due to incompetent or fraudulent return preparers.
- The reputation of honest, knowledgeable tax preparers is besmirched by the actions of should-be outlaws in the industry.
- The IRS spent a lot of resources in audits because of by incompetent or fraudulent return tax preparers.

Eunice Vargas,  
CIA, Accountant, QB Proadvisor

From: Catherine Moseley  
Sent: Monday, August 31, 2009  
Subject: "Notice 2009-60"

CCPA: LPD:PR (Notice 3009-60)

Dear Doug Shulman, IRS Commissioner,

On behalf of the Cincinnati CPA Sole Practitioner's Group, we welcome this opportunity to comment on a proposed new model of standards for tax preparers.

American taxpayers do have access to competent and ethical preparers, such as our group, and our principal plea is that the IRS helps in the promotion of this fact to the general public.

Taxpayers must understand the importance of paying only licensed individuals for tax preparation as well as the requirement for paid preparers to sign returns.

Although we commend the IRS for being deliberate in its review and research on this transformation change in the tax system, we would highly recommend to not create a one-size fits-all program. If not, decisions made might take us to places with intended and unintended consequences.

As you move forward in your decision making for this new model of standards whether it's registration, pretesting, ongoing testing or continuing education, differentiation would be of the most benefit to the American people.

The CPA professional has met a rigorous academic standard, passed a substantial examination, including an ethics requirement, by a state licensing authority, typically maintain a very active CPE requirement, including the requirement to attend ethics continuing education, as a condition of maintaining their license and subscribe to the Circular 230 requirements. In addition, the state Board's monitor each professional's continuing education units for each year.

We would urge any sort of overarching adoption of a certification regime, of a testing regime, of a specified CPE regime to be clear about not superimposing an additional set of rigors on professionals who already have achieved and maintained this standard. We have concerns with other tax preparers, who have not met and maintained this standard, becoming "licensed" or "certified" as it will confuse the general public as to the background and qualifications of the tax preparer, including the perception that the preparer is a "certified" public accountant (CPA).

There are currently professionals who are part of the tax system working with taxpayers to make voluntary compliance easier, to make sure the right amount of money is collected by the government and to make sure that taxpayers are treated fairly. We would encourage you to consider that regulated professionals, especially CPAs, who have already demonstrated competence, ought not to be subject to a new examination.

We thank you for this opportunity to offer up these thoughts and comments to you.

Sincerely,

The Cincinnati Ohio Society CPA Sole Practitioner's Group

Charlotte Johnston, CPA

Ann Kuntz, CPA

Richard Veid, CPA

John DiscepoJi, CPA

Catherine M. Moseley, CPA

Carol Topp, CPA

Catherine Moseley, CPA

Diana Veid, CPA

Sean Boland, CPA

From: Susan.Powell  
Sent: Monday, August 31, 2009  
Subject: CCPALPD:PR (Notice 2009-60)

Greetings,

Attached are Prometric's comments regarding the benefits of licensure. Thank you.  
Susan Powell | Director, Account Management  
Federal Government Segment

**IN RESPONSE TO NOTICE 2009-60 STANDARDS OF CONDUCT FOR THE TAX RETURN PREPARER COMMUNITY AND INCREASED TAXPAYER COMPLIANCE): THE VALUE OF LICENSURE AND CERTIFICATION**

Prometric is pleased to provide comments on IRS Notice 2009-60 (Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance). Prometric is the leading global provider of comprehensive testing and assessment services. We provide testing to a variety of clients, ranging from the American Institute of Certified Public Accountants (AICPA), the Financial Industry Regulatory Authority (FINRA) and the Association of American Medical Colleges (AAMC) in the private sector to the United States Patent and Trademark Office (USPTO), the Office of the Comptroller of the Currency (OCC) and the Department of Defense in the public sector. In 2008, Prometric delivered more than 7 million tests globally at more than 10,000 test centers in 163 countries. We note with interest IRS' interest in providing standards for the tax return preparer community and believe our extensive experience in the testing community provides us with information that may be helpful as the agency considers different options to increase return preparer compliance with the tax law. We understand IRS is considering all options as it evaluates its return preparer program. We are not experts on tax preparation; we have a tremendous amount of experience in helping clients determine whether individual candidates are fit for a particular job role and take this opportunity to share with you the benefits that accrue to an organization that is dedicated to assuring that those in key positions are in fact qualified and competent to hold such positions. Licensure and Certification has long been a tool used across a variety of industries to assure the use of proper standards and to verify the level of expertise of the professionals working within a specified field. Though a lack licensure or certification within an industry such as tax preparation certainly does not indicate a lack of qualified professionals, the establishment and maintenance of licensure and certification programs correlates with enhanced industry performance and a corresponding increase in the public's perception of the quality of the services provided. In this document, the following areas will be presented for consideration:

1. Typical goals of licensure and certification programs
2. Benefits of licensure and certification
3. Important considerations for licensure and certification programs

Individuals who possess a given licensure or certification are assumed to have a level of knowledge, skill, and ability that demonstrates a certain level of competency within that profession.

Typical goals cited for licensure and certification programs involve the following:

- Increasing the level of service provided to the public
- Enhancing the credibility of the profession
- Providing avenues for recognition and advancement for professionals

One of the main differences between licensure and certification is that licensure is a requirement. Unlike a mandatory license to practice, a certification program is voluntary.

Therefore, to be successful, goals of a certification program must include the ongoing demonstration of the value of the certification. Both licensure and certification require publication of information and a clear communication loop with candidates. A certification program, however, requires specific marketing plans and support for key business considerations in order to ensure successful launch and growth of a viable program.

There are three distinct parties that benefit from a strong licensure or certification program:

1. Employers
2. Candidates
3. Public

Each stakeholder group benefits from licensure or certification in a distinct way. The distinction with a licensure program is that it provides an immediate and consistent impact on all three stakeholder groups at the moment of implementation and throughout its existence. A certification program can have varying impact based on adoption levels.

Employers gain value from a licensure or certification program in a number of ways. The first value comes from a more consistent level of training and education for individuals in the field. An established program comes with published requirements for knowledge and skills within the industry. Once those requirements are established and publicized, training organizations and academic institutions structure themselves in a way as to provide the necessary education to candidates to gain the appropriate knowledge and therefore acquire certification or licensure. This environment creates an elevated and standardized process for the education and training of professionals.

A second value of licensure or certification comes from the positive public perception of licensed and certified professionals and the organizations that employ them. When the value of a licensure or certification has been successfully established within the industry and the public at large, organizations employing such professionals gain an enhanced credibility of the level of professionals involved in the program.

The introduction of a licensure or certification program often leads to measurable monetary benefits to the professionals working within those fields. Consider the following examples.

#### I. Green Certifications

With the ever growing concerns about ecologically responsible growth, the Green Building Certification Institute (GBCI) has undergone phenomenal growth in recent years and has established a significant number of new certification programs in response to the booming demands of the industry. *Payscale* evaluated bonuses associated with GBCI certifications programs. The results demonstrate significant financial reward to those individuals successfully obtaining GBCI certifications (see Table 1 on the following page).

Table 1: Median Bonus Paid by Job

LEED Accredited Professional (LEED AP)

7.000

(Payscale, 2009)

#### 2. Project Management

The Project Management Institute (PMI) has more than half a million members and credential holders in over 170 countries. Individuals within the project management field that obtain PMI certifications are shown to have an increased median salary (see Table 2 below).

Table 2: Median Salary Paid by Job Certification

Project Management Professional (PMP)

140.000

(Payscale, 2009)

In addition to the potential for increased compensation, licensed and certified professionals also report intangible gains from the credibility associated with having special recognition with their fields. The Human Resources Certification

Institute (HRCI) found the following results when surveying individuals within their industry:

- Three-fourths of certified respondents agreed that having HR certified professionals in an organization results in greater trust and confidence in the HR department/function compared to 46% of non-certified respondents. (HRCI, 2008)
- Nearly two-thirds of certified respondents (64%) rated certification as "very valuable" or "valuable" for being successful in day-to-day business operations, compared to 41% of non-certified respondents. In addition, when asked whether they would do it all over again, 97% of certified HR professionals said "yes". (HRCI, 2008)

The public at large typically see significant benefit from a strong licensure or certification program as well. Certification programs confirm that the professionals providing service have met specified prerequisites and have demonstrated an elevated level of knowledge and skill. Licensure programs go further to ensure that each and every practitioner in the industry meets requirements to ensure public health, safety, and welfare. In addition, licensure and certification typically provides a regulating mechanism in which individuals have to re-establish their qualifications and confirm that they continue to possess the requisite knowledge in their chosen profession. This



continuing confirmation of knowledge and skills provides a long-term benefit in the levels of service and knowledge of professionals the public is reliant upon on a regular basis.

There are a number of important considerations when establishing a licensure or certification program. To be successful a licensure or certification has to show value to employers, candidates, and the public.

The clearer the path to licensure or certification, the easier it is to show value. A certification or licensure program should have clear standards and well documented knowledge-based requirements. Major components of the standards include (but are not limited to) the following:

- 'Content outline for required knowledge components
- Standardized processes for application and appeal
- Valid assessment process
- Processes for recertification as necessary
- Organized certification records and lists
- *Encourage Participation in the Program*

Though a licensure program has an automatic participation component, a certification program cannot be sustained, grown, and evolved over time without initial adoption and increasing participation over time. Establishing an initial marketing plan for the program launch, as well as maintenance communication strategies, is an essential piece of the certification program.

Communication strategies should include the

- Establishing support from member organizations
- Creating strong online messages and easy access to certification processes
- Providing candidate communities that allow communication among candidates and certified professionals

The main way to establish the credibility of any certification program is through adoption of the examination. Steadily growing certification numbers and well planned marketing messages to the professional community are the backbone of programs that enjoy long term success. Though licensure programs are not as dependent upon a marketing message, strong and clear communication channels are key to candidate and public satisfaction.

Whether or not a licensure or certification program is appropriate for a given profession depends on a number of factors, including the knowledge and skills required for the profession, the needs of the public, and the overall goals of the industry. Regardless of the type of industry, organizations that have implemented and established strong licensure or certification programs have shown to add value to the three important stakeholder groups of the employers, the candidates, and the public. Most importantly, those successful licensure and certification programs have also driven professions to evolve and advance over time.

August 31, 2009

CCPA:LPD:PR (Notice 2009-60)

RE: Joint Comments on Notice 2009-60

On behalf of H&R Block Inc. and Jackson Hewitt Tax Service Inc. and in connection with the recent Internal Revenue Service Notice 2009-60, requesting public comments related to Standards of Conduct for the Tax Return Preparer *Community* and Increased Taxpayer Compliance, we submit the following joint comments for your consideration:

We at H&R Block and Jackson Hewitt Tax Service jointly support the IRS initiative to improve and increase compliance standards, requirements and expectations for the individual income tax return preparer community.

We require high standards and expectations from the tax preparers employed by our respective organizations. We look to the future when all tax preparers are held to uniform, established and defined standards across the industry. We believe the effective use of tax preparer standards, regulation and enforcement will ensure quality tax preparation for taxpayers and the proper tax liability collection for the United States Treasury.

In addition to this letter, we have each submitted separate comment letters regarding specific details and considerations that we each deem important to be considered as part of the comment period.

Please consider this joint letter to be a reaffirmation of our commitment to quality and an acknowledgement of the need for improvement in the tax preparer industry. We look forward to working with the IRS on this important issue and to help in whatever way we can to bring our joint resources together to improve tax preparation services to the tax paying public.

Thank you for your consideration.

Sincerely,  
Russ Smyth  
President and CEO  
H&R Block Inc.  
One H&R Block Way

Harry Buckley  
President and CEO  
Jackson Hewitt Tax Service c  
3 Sylvan Way  
Parsippany, NJ 07054

From: Charles Davidson  
Sent: Monday, August 31, 2009  
Subject: Notice 2009-60  
Attachments: TAP Response to Notice 2009-60.pdf  
Rebecca:

I'd like to thank you for speaking at our TAP Joint Committee meeting in Atlanta on August 21st. Our committee appreciated the opportunity to provide you with feedback regarding tax preparer regulation and oversight.

I am submitting TAP's formal response to Notice 2009-60, Response for Public Comment. Our response represents the general consensus of approximately 100 members and our constituents, the taxpaying public.

We appreciate the opportunity to provide our opinions and comments to you during this process. Should you have any further questions, please feel free to contact me.

Charles Davidson  
Chair, Taxpayer Advocacy Panel

RE: Notice 2009-60, Request for Public Comment  
Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance

To Whom It May Concern:

The Taxpayer Advocacy wishes to respond to Notice 2009-60, Request for Public Comment, Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance. The Taxpayer Advocacy Panel is a Federal Advisory Committee with approximately 100 volunteer members representing the interests of taxpayers throughout the country. Attached, please find our public response. In submitting this recommendation, I would like to thank Dean Condor, Linda Gambardella, Sabby Jonathan, M.I Lee, and Ken Wright for their work in compiling the opinions and concerns of our entire membership.

We would like to thank you for the opportunity to present our opinion on this important matter.

Sincerely,  
Charles Davidson, Chair  
Taxpayer Advocacy Panel

Shawn Collins, Acting Director, Taxpayer Advocacy Panel  
Attachment: TAP Response to Notice 2009-60

August 31, 2009  
CCPA:IPD:PR (Notice 2009-60)

RE: Notice 2009-60, Request for Public Comment  
Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance  
Thank you for the opportunity to provide input on the subject of Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance (Notice 2009-60). This response is from the Taxpayer Advocacy Panel (TAP), a federal advisory committee comprised of approximately 100 volunteer members located throughout the country. TAP represents the interests of taxpayers to the Internal Revenue Service. While many of our members are tax practitioners, many come from a variety of professions and industries. Our members are as varied as the taxpayers we represent.  
In 2007, we were asked by Commissioner Everson to provide a recommendation regarding the regulation of the tax preparation industry. Our response to Commissioner Everson is included as an attachment to this document.

During the last several months we have been surveying our membership in order to see if our prior position should be modified. Our members have provided many useful comments on the subject of tax preparer regulation. Our response to the current Request for Public Comment represents the current general consensus of our members and our constituents. With an organization as large as our, you can expect there are differing opinions that are not expressed in our response. We have given our members the opportunity to respond individually to the Request for Public Comment.

While TAP still adheres to our original recommendation to Commissioner Everson, we are taking this opportunity to provide the IRS with additional suggestions and detail.

### **Need for Tax Preparer Regulation**

While TAP generally agrees with the need for the regulation of tax practitioners, we have some concern as to whether the Internal Revenue Service might try to impose broad, sweeping regulation over the entire industry thus imposing another set of rules and requirements for those already regulated by some oversight entity (Le., attorneys, CPAs, and Enrolled Agents).

We would caution the IRS to fully define the nature and the scope of the problem which would be solved by regulation in order to appropriately limit the solution.

TAP believes the interests of the taxpayers are served well by having professional, competent, and ethical tax returns preparers. We would support a system of regulation that would ensure taxpayers' interests and rights are protected.

### **Who Should Be Subject to Regulation**

Certain professions, specifically attorneys, Certified Public Accountants, and Enrolled Agents, are already subject to significant oversight, educational requirements, and standards of ethical and professional behavior. In this respect, TAP agrees with National Taxpayer Advocate, Nina Olson:

"In order to become attorneys and CPAs, these practitioners have gone through years of education and have been tested themselves on their ability to think through a wide array of issues," Olson said. All states require attorneys to take multistate and state-specific bar exams, involving days of testing, and CPAs and attorneys are all subject to state licensure as well as a state codes of ethics that monitor their diligence. "It is negligence for them to practice in an area in which they are not competent, so that is a safeguard," Olson said. Enrolled agents, a third category of Circular 230 practitioner, are already tested and overseen by IRS. By contrast, unenrolled preparers have no minimum tax or law competency standards, she said.<sup>1</sup>

Any new regulation should exempt those professions. On the other hand, in cases where those exempted are engaged in fraudulent or unethical behavior, enforcement should be stepped up.

Our members have concerns that, no matter how much regulation is imposed, there are those within the industry who will choose to act unethically. The only remedies for these situations are heavy sanctions and the revocation of their license.

Anyone who prepares tax returns for a fee and who is not exempted should be subject to regulation. Regulation should focus only on paid preparers as they have presented themselves as having expertise and should be held to some standard. Such a person is offering professional services and should be expected to perform those services with a minimum amount of competence. Regulation should protect the taxpayer by requiring preparers to be technically competent and by preventing unethical tax preparation practices.

It should be noted that regulation should apply to the individual and not the company or firm by which the tax preparer is employed.

Some thought should be given, however, to the number of returns prepared to be considered a "professional" tax preparer. For example, a person who prepares a limited number of tax returns each year and charges only enough to cover basic expenses might be exempt from regulation on the basis of their limited practice. Preparers who complete fewer than 15 or 20 returns in a calendar year, for example, might be exempt from regulation. Offers-in-Compromise. TAP believes that there is much abuse in the growing specialty of preparing Offers-in-Compromise (OIC). The IRS should consider some additional form of regulation to those individuals and firms that prepare OICs and advertise these specific services (perhaps even outside and in addition to the current proposed preparer regulation). These services promote an unfair view of tax administration, one that allows a taxpayer with a past tax liability to settle by paying less than their fair share. In some cases, these services take advantage of taxpayers by preparing OICs regardless of their client's ability to pay resulting in a denial of the OIC and a large fee due to the OIC preparer.

Because of the severity of the problem, regulation should be imposed on such preparers regardless of their professional standing (attorneys, CPAs, Enrolled Agents, etc.)

Software Providers. TAP strongly believes that the tax software industry requires additional

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<sup>1</sup> "Tax Practice: Olson Says No to Testing All Preparers but Yes to Credentials for Newly Tested." BNA Daily Tax Report, August 18, 2009.

oversight. As more and more individuals turn to software and online preparation services to selfprepare

tax returns, software plays an increasing role in tax preparation and compliance.

Taxpayer Advocacy Panel Response to Request for Public Comment (Notice 2009-60)

Software can be an excellent tool to help prepare a tax return but it is no substitute for an experienced tax preparer who understands and can apply the tax law to a specific set of facts. An individual can, in fact, easily manipulate the numbers on a self-prepared tax return in order to get the "best" refund without understanding the implications of his or her actions.

Additionally, taxpayers who use software and online tax services are increasingly exposed to high-pressure marketing techniques that intend on selling Refund Anticipation Loans (RAL) to consumers who do not take time to read and understand the "fine print." As a result, taxpayers are paying fees to services without fully understanding what they are paying for. Such practices market to and take advantage of an uninformed consumer.

Another cause for concern is the inability of the taxpayer to obtain prior year tax returns in the event of an audit or examination. Taxpayers should be responsible for printing out and retaining copies of all tax returns, but in the event they do not, there is no easy way to obtain copies of prior year tax returns prepared with software and, especially with online services.

Another aspect of the software industry is the difference between individual and professional versions of tax preparation software. Professional tax preparation software is specifically created and set up for tax practitioners. Preparers have the ability to include their EFIN and PTIN numbers and have their information entered in the paid preparer section of the tax return. Individual tax preparation software, on the other hand, is not set up to include this information. Because non-commercial tax preparation software is so readily available from most retail outlets during tax season, an individual may purchase the software with the intent to prepare multiple tax returns and charge clients. In other words, the availability of software makes it easy for someone with little or no tax education to set them up as a tax preparer. Tax returns prepared with non-commercial software are marked as self-prepared and no preparer information is provided on the return. The tax returns can be easily e-filed because an individual is not required to obtain an EFIN, thus circumventing all of the safeguards implemented by the IRS.

Although software companies have license agreements that prohibit this practice, the terms of the license agreements are not enforced. In order to protect taxpayers, the area of software and online tax preparation websites should be thoroughly investigated as well and should fall under the scope of tax preparer regulation.

### **Components of Regulation**

**Tracking.** "A unique identifying number to control each preparer and an effective management information system are necessary for the IRS to facilitate tax administration and provide oversight of preparers.<sup>1</sup> A unique identification number should be assigned to every person who prepares tax returns for a fee. A unique identifying number, regardless of testing, registration, or certification, should be the first step in regulating preparers.

Currently, the IRS issues a Preparer Tax Identification Number (PTIN) to paid preparers to use to identify themselves to the IRS while not disclosing their social security number when signing the tax return. The IRS should require all paid tax preparers to acquire a PTIN number as a basic requirement of regulation.

**Registration.** Registration is similar to tracking but with additional and more stringent requirements such as obtaining criminal background checks or performance bonds. TAP favors a registration process that would require paid preparers to pass a background check, present educational and experiential credentials, and follow a prescribed application process.

The IRS already has a process in place to approve tax preparers who wish to e-file tax returns. The registration process could be merged with the process to obtain an Electronic Filing Identification Number (EFIN) to ensure that tax preparers are not only registered but have met the requirements to be an Electronic Return Originator (ERa). In this way, the IRS could eliminate redundant background checks and duplicate fingerprint submissions.

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<sup>1</sup> Treasury Inspector General for Tax Administration, *Inadequate Data on Paid Preparers Impedes Effective Oversight*. (Reference #2009-40-098), July 14, 2009

In California, the California Tax Education Council (CTEC), requires each registrant to pay a small fee to register to pay for the cost of administering the oversight program. A similar program could be adopted by the IRS as long as the cost to become registered is not prohibitive.

**Education.** Education, in the form of IRS-sponsored programs and opportunities, is a soft form of regulation. Such educational programs ensure that preparers adhere to professional standards and follow the law. By teaching preparers the legal and regulatory requirements, the IRS provides a soft form of regulation that can be effective and less costly than other forms of regulation. The IRS should consider a minimum educational standard for unenrolled prepared. For example, California requires prospective tax preparers to complete a 60-hour income tax preparation course before that register as a tax preparer. Oregon has a similar requirement for an 80-hour program.

The burden of administering such programs could be shifted to private, IRS-approved education providers, which is the model currently in place in both California and Oregon.

If a standard for education is imposed, TAP recommends that it apply only to new preparers who begin practicing after initial regulation has been implemented. An educational requirement should not be imposed on currently practicing tax preparers who can otherwise demonstrate competency through some other means, such as passing a minimum competency test.

**Continuing Education.** As the tax code changes each year, the need to keep current is self evident. Any registration or licensing requirement would need to include continuing education as a requirement to keep the license or registration current and valid. Many professional associations and regulatory systems require a certain number of hours of continuing education each year to keep licenses valid.

TAP recommends an on-going continuing education requirement, similar to those required of CPAs and Enrolled Agents. The IRS should consider a requirement that tax preparers obtain between 18 and 30 hours of continuing education every year, with at least 8 of those hours in courses concerning current year changes in tax rules or regulations.

**Testing.** The purpose of testing is to demonstrate competency. Tax preparers should be able to demonstrate their basic knowledge and ability through a test. Enrolled Agents are already required to pass a three-part test. Requiring the same test would, in effect, require all tax preparers to become Enrolled Agents.

There is a need to have practitioners who simply prepare tax returns without the need to represent their clients before the IRS. As such, a test for competency should not use the same test as that required for Enrolled Agents.

Instead, tax practitioners should be able to demonstrate competency with basic knowledge required to prepare a Form 1040 together with its required worksheets and schedules. A test should cover all aspects of personal income tax returns. At a minimum, the test should examine knowledge of gross income, filing status, dependency exemptions, adjusted gross income, itemized deductions, rental income and expense, and capital gains and losses. If the licensed preparer will be able to prepare sole proprietorship tax returns, trusts or fiduciary returns, then a thorough knowledge of those areas is also needed.

This, of course, raises the question of whether or not a tax preparer has the education and knowledge to be able to preparer more complicated tax returns. In California, the basic education requirement covers only personal income tax returns but, once registered, the practitioner can prepare any tax return. It should be incumbent on the practitioner to determine if he or she has the knowledge and skill to prepare such a return, a situation that could be covered by a Code of Professional Conduct and ethics guidelines.

Currently, an IRS-approved vendor, Prometric, administers the Enrolled Agent exam. The IRS could contract with Prometric to administer the test for tax preparers. Prometrics should be allowed to charge a reasonable fee to offset their cost, but the preparer should incur only minimal additional costs to meet the regulations.

Once the practitioner has passed the test, they should be not be required to take the test again as long as they continue a program of continuing education.

Renewing TAP believes that professional preparers should be required to renew their registration or license once every two to three years. Proof of continuing education should be submitted at the time of renewal.

**Enforcement**

Naturally, regulation also means enforcement. In implementing a regulatory structure, the nature and extent of enforcement needs to coincide with the regulatory scheme. The nature and extent of enforcement is the most difficult to design and, perhaps, the most costly to implement. It goes without saying, without proper enforcement, any regulatory efforts quickly become a farce.

TAP recommends the Office of Professional Responsibility (OPR) be charged with enforcement as they currently do with Enrolled Agents. TAP further recommends that tax preparers be subject to the same ethical requirements as Enrolled Agents and that Treasury Circular 230 be amended to include all professional tax preparers.

Civil penalties should be imposed for violations with the amount of the penalty being appropriate to the extent of the violation. Unethical action should result in higher penalties.

Preparers engaging in consistent unethical behavior should not be allowed to continue to prepare tax returns. A benefit to taxpayers would be an IRS-sponsored website that would list (or contain a search feature to find) registered or licensed tax preparers. In this way, taxpayers could be certain their preparer has met the minimum acceptable standards and is current with their requirements. This may also help ensure that tax preparers remain compliant. Of course, the IRS could not recommend a specific preparer, but would recommend avoiding someone who is not on the list of approved tax preparers.

#### ATTACHMENT A

##### Response to Commissioner Everson Regarding Tax Preparer Licensing

The focus of this paper is to make recommendations regarding licensing of paid tax preparers.

We have looked at this issue from the viewpoints of taxpayers, tax preparers and the Internal Revenue

Service (IRS).

##### Recommendations

After our review of this issue, the Taxpayer Advocacy Panel (TAP) recommends licensing of paid tax preparers. The license should be based on:

- Level and area of expertise; and
- A required background check to insure protection of the taxpayer especially with respect to identity theft issues.

##### Why License Paid Tax Return Preparers?

Currently, anyone can prepare tax returns for a *fee*, regardless of their knowledge or training in tax preparation. Taxpayers are hurt when their returns are not prepared properly. Both the IRS and taxpayers incur costs because of fraudulent and inaccurate returns. In general, knowledgeable and trained tax preparers support licensing of paid preparers.

We recommend licensing based upon the preparer's knowledge set. Each license would identify the level of expertise of the tax preparer. The licenses would apply to individuals only, not their company. Since tax laws are added or changed periodically, the license should be updated annually to

reflect knowledge of these changes.

Existing tax education programs are currently used by private, professional, educational and IRS providers. These should be the basis for certification and meeting the IRS requirements. In addition to covering tax law issues, training should cover ethics topics. The IRS already updates the Volunteer

Income Tax Assistance (VITA) training, testing materials and certification process every year.

This testing could be used as a base to set the minimum standards a paid tax preparer must meet to be licensed and used to identify the levels of expertise the individual tax preparer should have on their license.

Unscrupulous preparers can defraud the taxpayer in various ways, including identity theft, by having access to personal information. Paid tax preparers should be subject to a basic background check, as part of their licensing requirement. Background checks will help to identify persons who have previously been convicted of financial crimes or other activities that should preclude them from having access to taxpayers' personal and financial data.

Taxpayer Advocacy Panel

Response to Request for Public Comment (Notice 2009-60)

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**Conclusion**

The licensing of paid tax return preparers will benefit the taxpayers, tax preparers, and the IRS by reducing fraudulent and inaccurate returns raising the professionalism of preparers, and enabling the

IRS to ensure the qualifications of the people who are paid to prepare tax returns.

The benefits of licensing include:

- Protecting taxpayers from costs related to having their returns prepared improperly.
- Reducing the likelihood of identity theft from misuse of taxpayer data.
- Reducing the incidence of fraudulent returns created by unscrupulous preparers.
- Increasing the ability for the IRS to identify those preparers who have engaged in unethical behavior.
- Allowing the IRS to ensure the qualifications of the people who are paid to prepare tax returns and hold them to defined standards.



From: Smith, Sarah Louise  
Sent: Monday, August 31, 2009  
Subject: Response to Notice 2009-60

Attachments: Undercover press release 1-21-09 Birmingham final.doc; Undercover Review Results & Analysis (01-21-09 final).doc; AL Indiv Tax Preparers Act Summary (8-11-08).doc

Dear Commissioner Shulman,

Please accept these attachments as a response to your call for public comments on tax preparer reform. Impact Alabama is a statewide nonprofit that trains college and law students to provide free tax preparation services to low-income, working families across Alabama. In our work, we encounter individuals on a regular basis who have had problems with commercial tax preparers. Our organization partnered with the Alabama Department of Revenue during the past legislative session to encourage our State Legislature to adopt tax preparer reform legislation similar to that in effect in Oregon and Maryland. The bill passed the State Senate unanimously but stalled in the State House when several lobbyists were hired by commercial tax preparers opposed to the bill. In preparation for this legislative effort, we conducted an undercover review of thirteen commercial tax preparers in Alabama and documented a large number of negligent and fraudulent mistakes - as well as the extremely high cost of return preparation for fairly straightforward returns. We are looking forward to potential action being taken by the IRS to alleviate some of the problems that occur when tax preparers are untrained and unlicensed.

I have attached the following documents:

1. Press release highlighting the work from our undercover review
2. Summary and analysis of undercover review
3. Summary of the Alabama Taxpayer Protection & Assistance Act

Thank you for your willingness to hear public comments on this important issue. Please let me know if I can answer any questions about the work that we have done or provide you with any additional information.

Sincerely,

Sarah Louise

Sarah Louise Smith

Administrative Director

Impact Alabama

#### UNDERCOVER OPERATION EXPOSES FRAUD AND NEGLIGENCE IN ALABAMA'S COMMERCIAL TAX PREPARATION INDUSTRY

*Local Nonprofit Impact Alabama Conducts Review Demonstrating Serious Abuses That Harm Working Alabamians* Birmingham, AL - *Impact Alabama* today released findings of significant fraud and negligence among commercial tax preparers across the state of Alabama. These findings were gathered from an undercover review of thirteen unlicensed seasonal commercial tax preparers.

From January 8-15, 2009, using recording devices to accurately document conversations, Impact Alabama staff posed as taxpayers and asked the paid preparers to prepare, but allow the taxpayers to file, federal and state tax returns under one of two straightforward scenarios.

The review uncovered evidence of significant fraud and negligence among professional tax-return preparers. All thirteen tax returns (100%) were prepared incorrectly. All thirteen returns contained negligent mistakes and omissions considered to have been caused by human error and/or misinterpretation of the tax laws. Eleven (85%) of the thirteen contained misstatements and omissions considered to have been willful or fraudulent.

"The undercover review revealed that many commercial tax preparation companies confuse and abuse their customers with poor disclosures, high fees and costly miscalculations," noted Stephen Black, President of Impact Alabama. "Exorbitant fees provide an incentive to fraudulently inflate tax refunds and exploit low-income taxpayers."

Averaging only 40 minutes of preparation time, the tax preparers charged the undercover taxpayers as

much as \$405 for the preparation of relatively simple returns (returns reporting a small amount of income from wages, interest, and self-employment and requiring no itemization.)

The most significant problem uncovered was the fraudulent misapplication of the Earned Income Tax

Credit, a refundable credit intended to help low-wage workers who are raising children. Because no child, in either of the two scenarios, lived in the home with the undercover taxpayer for more than six months in 2008, the taxpayer was ineligible to receive the EITC.

However, eleven of thirteen tax preparers fraudulently claimed the Earned Income Tax Credit for the undercover taxpayer. This incorrect claim of the EITC is problematic for three main reasons: (1) it causes long delays in the processing of the tax return of the parent who should rightfully claim the child for the EITC, thus preventing her or him from receiving the EITC benefit for many months. Often the rightful parent is overwhelmed by the required petitioning process, and the support to which they are entitled is never received; (2) it leaves the taxpayers vulnerable and liable for the inflated refund amount, which they will be forced to repay with fines and penalties should the return be audited later in the year; (3) if the EITC is disallowed upon audit later in the year, the IRS may penalize the taxpayer by preventing her from claiming the EITC for up to ten years in the future - even if, in future tax years, she is eligible to claim it - causing her to lose out on thousands of dollars of EITC benefits.

When asked about the rule regarding EITC eligibility, one tax preparer stated "well, you're supposed to have them for six months out of the year, but whatever. We'll just go ahead and put you on here as head of household and let you claim both kids. "Had these returns actually been filed, many of these preparers would have been subject to substantial criminal and civil penalties. All paid preparers are subject to Internal Revenue Code penalties. Code

Section 7206 provides that willful preparation of a false or fraudulent return can result in a fine of up to \$100,000, 3 years imprisonment, or both, while Code Section 7207 provides that knowingly providing fraudulent returns or other documents to the IRS can result in a fine of up to \$10,000, 1 year imprisonment, or both. Such violations are also subject to state penalties under the jurisdiction of the Alabama Department of Revenue. Additional Problems Documented Include:

\*Failure to report non-W-2 business income: Both of the taxpayer scenarios included self-employment income, and the taxpayers told the preparers that they had such income in twelve out of the thirteen site visits. Despite being told of the side income, ten out of twelve preparers did not report the income as required. One Birmingham preparer told the undercover taxpayer that he didn't need to report his side income because if "you can't prove it, how can you report it? "

\*Failure to report interest income: 8 out of 11 preparers chose to incorrectly exclude this taxable income from the taxpayers' tax returns.

\*Filing status: 12 out of 13 tax preparers allowed our taxpayers to claim the Head of Household filing status, despite the fact that they had no qualifying person or dependent living in their home for more than six months in the year.

\*Failure to sign return: although the tax preparer is legally required to sign the tax return upon completion, 2 out of 13 preparers chose not to sign the return, making it impossible for the taxpayer to

seek assistance later in the year. if there is a problem or audit of the return.

"Taxpayers put their trust, their financial health, and their liability for taxes in the hands of commercial preparers," said Sarah Louise Smith, Director of Impact Alabama's SaveFirst Initiative, which operates sixteen free tax sites in Alabama, "Unfortunately, that trust is often betrayed." \*The test results also showed that many preparers failed to tell taxpayers about free filing options, and still do not inform taxpayers that a Refund Anticipation Loan is, in fact, a loan - despite years of complaints and lawsuits on that issue. Even when testers were told that a RAL is a loan, many preparers did not give clear price information about RALs and tax preparation fees, leaving testers confused and unable to comparison shop. In one case, a tax preparer incorrectly told the undercover tax payer that the "48 hour option" is not a loan just a way to get the refund quicker - for a fee of \$651. With a refund amount of about \$5,230 and assuming a one week normal wait for the refund, this means that the annual percentage rate for the loan would have been approximately 628%. A spreadsheet and in-depth summary of the results of the undercover review are attached to this release. Also attached are copies of the narratives from the site visits.

## **BACKGROUND**

### **The Problem:**

In recent years, growing numbers of taxpayers have hired someone else to do their returns. Some 60% of all individual taxpayers in Alabama now hire a preparer to do their returns, up from 46% in the mid-1980s, according to IRS data. This rate is even higher, 75%, among Alabama's 492,000 lower income recipients of the Earned Income Tax Credit (EITC), a refundable credit intended to boost low-wage workers out of poverty. More EITC recipients in Alabama pay to have their taxes prepared than in any state in the country other than Mississippi. Alabama's EITC families annually lose \$77 million to commercial tax preparers through fees and RALs. Those preparing taxes include many highly trained professionals -- such as tax lawyers, certified public accountants and enrolled agents -- who face considerable professional regulation. But it also includes thousands of other commercial preparers across Alabama referred to as unenrolled agents, who target lower income families with their services and products. Despite the importance and complexity of this task, neither federal nor state governments provide any oversight over unenrolled tax preparers (the exceptions are California, Oregon and Maryland). There are no minimum proficiency standards or certification requirements to become a tax preparer in Alabama. More than a million lower and middle income Alabamians put their trust, their legal liability for taxes, and their financial health in the hands of unregulated paid preparers. This population of unenrolled preparers is very diverse, ranging from those employed by commercial tax preparation companies, such as H&R Block and Jackson Hewitt, to those working as sole practitioners in storefront operations. Some preparers have extensive training and experience and others have little or no training or credentials. Due to the seasonal nature of the business, many paid preparers (who often don't properly sign the returns they prepare) cannot be found after tax season, leaving taxpayers stranded to decipher confusing tax law and requirements.

#### **Similar Operations Have Yielded Similar Results:**

In 2006, The United States Governmental Accountability Office conducted an undercover investigation in which they had tax returns prepared at 19 outlets of several commercial chain preparers scattered throughout a major metropolitan area. Only 2 of 19 tax returns showed the correct refund amount.

Incorrectly reported refunds ranged from refunds overclaimed by nearly \$2,000 to underclaims of over \$1,700. (2006 U.S. GAO Report to U.S. Senate Committee on Finance: In a Limited Study, Chain Preparers Made Serious Errors.)

In a 2008 U.S. Treasury Inspector General for Tax Administration Report, results were presented from an undercover review to determine whether taxpayers receive accurate preparation of their income tax returns when using unenrolled paid preparers. In February and March 2008, Tax Administration auditors paid to have 28 tax returns prepared at commercial tax return preparation offices. Seventeen tax returns (61%) were prepared incorrectly, and only eleven (39%) were prepared correctly. Eleven (65%) of the seventeen contained mistakes and omissions we considered to have been caused by human error and/or misinterpretation of the tax laws. Six (35%) of the seventeen contained misstatements and omissions considered to have been willful or reckless (2008 U.S. Treasury Inspector General for Tax Administration Report: Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors.)

During 2007-08, New York State tax officials uncovered evidence of significant fraud among professional tax-return preparers in a statewide sting operation in which undercover agents posed as clients. Officials reported that they were startled not only by the unexpectedly large amounts of tax evasion they witnessed, but also by the brazen nature of the cheating, which was caught on secret recordings. Officials say they found evidence of fraud among about 40% of the 85 professional tax-return preparers they visited. If all the phony returns that were prepared had actually been filed, "it would have cost the federal, state and local governments approximately \$4 million" (Wall Street Journal, 11-26-08: "New York Sting Nabs Tax Preparers".)

In April, 2008, the National Consumer Law Center released a report based on seventeen "mystery shopper" tests conducted at H&R Block, Jackson Hewitt, Liberty Tax service and independent preparers in Durham, North Carolina, and Philadelphia, Pennsylvania. The tests provided extensive documentation of serious tax preparation errors and evidence that RALs exploit IOW-income taxpayers, promote tax fraud, and expose confidential tax returns to prying eyes. RALs carry high costs and risks, and drain hundreds of millions from the Earned Income Tax Credit (EITC), a special tax benefit to working poor (National Consumer Law Center Report "Tax

Preparers Take a Bite out of Refunds: Mystery Shopper Test Exposes Refund Anticipation Loan Abuses in Durham and Philadelphia." April 8, 2008).

#### **Volunteer Income Tax Assistance Sites Provide Alternative:**

In responding to the overwhelming need for competent and honest tax preparation services in Alabama, SaveFirst, an initiative of Impact Alabama, in a partnership with the IRS, trains college, graduate, and law students to provide free tax preparation services and opportunities for savings and economic improvement to IOW-income, working families. In its third year of operation, more than 350 trained college, graduate, and law students from sixteen campuses throughout the state will be preparing tax returns for working families at community-based sites in twelve cities throughout Alabama until the end of February. [Students from UAB, UA, Birmingham Southern College and Samford University are working at site in Birmingham.] Provides for the oversight of the commercial tax preparation industry through a state agency (excluding Certified Public Accountants, Enrolled Agents, and lawyers already required to obtain licenses);

Requires individual tax preparers and refund anticipation loan facilitators to apply for an annually renewable license, fulfill an annual continuing education requirement, and pay an annual fee to the State; Requires refund anticipation loan facilitators to provide written disclosures to clients when preparing refund loans;

Utilizes portion of licensing fees to provide grant support to IRS-certified Volunteer Income Tax Assistance (VITA) nonprofit sites throughout state;

Expands informational outreach efforts to individuals eligible for the Earned Income Tax Credit.

**Need for Legislation** The federal Earned Income Tax Credit (EITC), the federal government's largest antipoverty program, was established by Congress in 1975 for low-wage, working individuals and families as a refundable tax credit designed to "make work pay." Many low-income households are eligible for the EITC and other tax credits, but are unaware of their existence and thus do not apply for the annual refunds. Moreover, many who do not have the resources or knowledge to file their own taxes instead rely on costly commercial tax preparers. In 2005, more than 492,000 working families in Alabama claimed an estimated \$1 billion through the federal EITC. However, with more than 75% of EITC recipients in Alabama paying a commercial preparer to complete their taxes, Alabama families lost more than \$78 million to tax preparation and refund anticipation loan costs - a figure which places us 48th in the nation. That extra \$78 million could have made a tremendous contribution to helping lower-income families secure health insurance, pay down debts or put food on the table.

Additionally, many consumers are convinced to take out a Refund Anticipation Loan (RAL)--a predatory one-to-two week loan secured by and repaid directly from the proceeds of a consumer's tax refund, offered at exorbitantly high interest rates, ranging from about 50% to over 800% APR. Because RAL facilitators rarely provide clear disclosures as to the nature of their products, many consumers are unaware that they are paying to borrow their own money at exorbitant interest rates and that they could receive their refunds in as little as one week without a RAL.

To be a hairdresser in Alabama, an individual must have certain training, obtain a license, and pay a fee to the state. To prepare taxes in Alabama, an individual must do none of these things. There are currently no educational qualifications, no training standards, and no licensing requirements that must be met to become a paid tax preparer in Alabama. Anyone who can rent a storefront can set up shop as a tax preparer. Although many paid preparers are well-trained and operate with integrity, others are more interested in pushing needless products that inflate their businesses' profits (e.g., refund anticipation loans, investment schemes) than in serving the best interests of their clients. The average fee charged to families for tax preparation services, often requiring less than an hour of work, is approximately \$250.

#### **Legislative Solution**

The Alabama Individual Tax Preparers Act addresses these important issues faced by Alabama's working families. The purposes of the Act are as follows:

- to provide oversight authority to a state agency which shall oversee the commercial tax preparation industry (excluding Certified Public Accountants, Enrolled Agents, and lawyers already required to obtain licenses);
- to require individual tax preparers and refund anticipation loan/check (RAL/RAC) facilitators to annually register and pay a fee to the State;

- to establish certain educational standards for individual tax preparers (including annual continuing education requirements);
- to require refund anticipation loan facilitators to provide written disclosures to clients when preparing refund loans (including specified language and minimum size of written type);
- to utilize portion of licensing fees to provide financial support to IRS-certified Volunteer Income

Tax Assistance (VITA) sites throughout the state in order to expand the number of nonprofit organizations and other agencies providing free tax preparation services;

- to expand informational outreach efforts to individuals eligible for the Earned Income Tax Credit in order to increase the number of families who claim it as well as provide information about free tax preparation sites.

In anticipation of the 2009 legislative session, a statewide coalition of college and law students from more than ten campuses statewide are working together to raise awareness and gain the support of the Alabama Legislature and Governor to pass the groundbreaking Alabama Individual Tax Preparers Act. This type

of grassroots mobilization of students to achieve such a significant improvement in the lives of working Alabamians is unprecedented in our state. The students will be organized by Impact Alabama: A Student Service Initiative, the state's first nonprofit organization dedicated to developing and implementing substantive service-learning projects in coordination with colleges and universities throughout Alabama.

Impact Alabama has been directly involved in the development of the Alabama Individual Tax Preparers Act. Impact Alabama's SaveFirst Initiative trains college, graduate, and law students to offer free tax preparation services and opportunities for economic improvement to low-income, working families--especially targeting those eligible for the Earned Income Tax Credit. In just its second year, SaveFirst trained over 260 students from twelve campuses who prepared tax returns for over 1,400 working families--helping them to secure \$2.4 million in tax refunds and saving them \$290,000 in commercial tax preparation fees.

#### **Impact Alabama Undercover Investigation of Commercial Tax Preparers in Alabama Results and Analysis**

From January 8, 2009, to January 15, 2009, Impact Alabama staff conducted an undercover review to determine whether Alabama taxpayers receive accurate preparation of their income tax returns when using un-enrolled paid preparers. Tax returns were prepared at thirteen outlets of several commercial chain preparers and independently owned tax preparation offices located throughout the state.

Impact Alabama staff posed as taxpayers and asked the paid preparers to prepare, but allow us to file, our federal and state tax returns under two scenarios.

**Female Scenario:** The undercover female taxpayer is a single, never married mother of two children, both of whom lived with her for only part of the year in 2008. Child #1 lived with her on the weekends (Friday-Sunday) and with the child's father for the rest of the week for all of 2008. Child #2 lived with her for five months during the year, but did not live with any other single individual for a longer period of time during the year. The female taxpayer provided over half of Child #2's support. The female taxpayer earned wages from a secretarial job. She also earned a small amount in interest and kept track of cash income from a babysitting job. She reports paying child care expenses for Child #2 to attend an after-school program while she worked.

**Male Scenario:** The undercover male taxpayer is a single, never married father of one child, who lived with him on the weekends (Friday-Sunday) for all of 2008. The child lived with his mother on the other days during the week. The male taxpayer provided over half of the child's support, but his mother does earn income and is required to file a tax return. The male taxpayer earned wages from a custodial job. He also earned a small amount of interest and kept track of cash income from a lawn care job. On the next pages, two charts outline the results from this investigation. Also included are written descriptions demonstrating the proper completion of the return, the mistakes that the tax preparers made, and how these mistakes would harm the taxpayers involved. To arrive at correct returns for the two scenarios, Impact Alabama staff consulted with Steve Hendricks, a Certified Public Accountant and partner at Culotta, Scroggins, Hendricks & Gillespie, P.C., in Birmingham. Mr. Hendricks reviewed the completed the tax returns and agreed

on (1) what should and should not be reported on the returns and (2) the correct refund amount for each scenario.

## **Analysis of Results**

### **Earned Income Tax Credit.**

Because no child, in either scenario, lived in the home with our taxpayer for more than six months in 2008, our taxpayers are ineligible to receive the EITC. However, **11 out of 13 tax preparers fraudulently claimed the Earned Income Tax Credit for our taxpayers.** This incorrect claim of the EITC is problematic for three main reasons: (1) it causes long delays in the processing of the tax return of the parent who should rightfully claim the child for the EITC, thus preventing her or him from receiving the EITC benefit for months. Often the rightful parent is overwhelmed by the required petitioning process, and the support to which they are entitled is never received; (2) it leaves our taxpayers vulnerable and liable for the inflated refund amount, which they will be forced to repay with fines and penalties should the return be audited later in the year; (3) if the EITC is disallowed upon audit later in the year, it penalizes our taxpayers by preventing them from claiming the EITC for up to ten years in the future - even if in future tax years they are eligible to claim it - causing them to lose out on thousands of dollars of EITC benefits.

### **Dependency Exemptions.**

Our female taxpayer is eligible to claim as a dependent only one of her children: the daughter who lived in the home for five months but for whom our taxpayer provided over half of support. Our male taxpayer is ineligible to claim his child as a dependent because the child's mother is entitled to claim the child. However, **11 out of 12 tax preparers incorrectly claimed dependents on the tax returns.** This mistake hurts the parent who should rightfully claim the child as a dependent by preventing him or her from filing an electronic return and thus delaying the processing of his or her return. Moreover, following the end of the tax season, the IRS will alert both parents that they have each claimed the same child on their returns and instructing the parent with whom the child did not live for more than half the year to submit an amended return. At this point, the tax preparer who incorrectly claimed the child for our taxpayers will cause our taxpayers to be forced to repay a portion of their refunds along with fines and penalties. More than likely, our taxpayers will have already spent their refunds and thus will not be in a financial position to be able to repay this amount.

**Filing Status.** 11 out of 12 tax preparers allowed our taxpayers to claim the Head of Household filing status, despite the fact that they had no qualifying person or dependent living in their home for more than six months in the year. Because of this fact, the correct filing status should have been Single. Choosing the Head of Household filing status results in an underpayment of owed taxes, leaving the taxpayer vulnerable to fines and penalties during audits late in the year.

### **Self-employment Income.**

Taxpayers are required to report self-employment income of more than \$400 on their tax returns. Although our taxpayers reported to the tax preparers that they had received more than \$1,500 in cash income through either a babysitting or lawn care job in 2008, 10 out of 12 tax preparers chose to incorrectly omit this information from the tax returns (in one case, the tax preparer failed to ask about additional income, and our taxpayer did not address self-employment income at all). Omitting this information results in an underpayment of self-employment taxes by our taxpayers, which would have added to their total contributions toward Social Security. This error also leaves our taxpayers vulnerable to fines and penalties during audits later in the year.

Of the two tax preparers who did include the self-employment income, both preparers incorrectly included the expenses that our taxpayer listed for this job. Because our taxpayers did not keep receipts from the expenses, they are not entitled to claim any expenses to offset the self-employment income. This error also leaves our taxpayers vulnerable to fines and penalties during audits late in the year.

### **Wages and Investment Income.**

Income documented on W-2 forms was correctly entered in all 13 returns. The taxpayers in both scenarios did not bring a form reporting interest income, but they reported to the tax preparers that they did receive interest income. (In one case, the tax preparer failed to ask about additional income, and our taxpayer did not address interest income at all.) Despite the fact that taxpayers are required to report interest income regardless of whether they received a form reporting the amount, 9 out of 12 preparers chose to incorrectly *exclude* this taxable income from the

taxpayers' tax returns. This error leaves our taxpayers vulnerable to fines and penalties during audits late in the year.

**Child & Dependent Care Credit.**

8 out of 9 tax preparers incorrectly included the Child & Dependent Care Credit on the female taxpayer's return (the undercover taxpayer inadvertently failed to mention childcare expenses in one of the site visits.) Because her daughter did not live in her home for more than six months in the year, our female taxpayer is not eligible to receive credit through the Child & Dependent Care Credit. She will be required to repay this amount should her return be audited later in the year.

**Child Tax Credit and Additional Child Tax Credit.**

Because their children did not live in their homes for more than six months in 2008, our taxpayers are ineligible to claim either the Child Tax Credit or the Additional Child Tax Credit. However, because 11 out of 12 tax preparers fraudulently stated that one or both of their children lived in their homes for more than six months, our taxpayers illegitimately claimed the Child Tax Credit and the Additional Child Tax Credit on their tax returns. This error resulted in an overstated refund of \$2,000 on the female taxpayer's tax return and an overstated refund of \$1,000 on the male taxpayer's tax return. They will be required to repay this amount and be liable for penalties should their returns be audited later in the year.

**Preparers' Identifying Information.**

In addition to various fraudulent and negligent errors, some preparers also did not include identifying information required on the 1040 forms they completed. IRS regulations require that paid preparers include a signature or typed name, a social security number or "PTIN" (an IRS-issued unique identifier for paid preparers) and the name and employer identification number of their employer.

Although the tax preparer is legally required to sign the tax return upon completion, 2 out of 13 preparers chose not to sign the return, making it impossible for the taxpayer to seek assistance later in the year if there is a problem or audit of the return. One return had no preparer social security number or PTIN. One return included a company name but without an address.

**Refunds.**

None of the 13 tax preparers arrived at the correct refund amount. As a result of the erroneous practices described above, many tax preparers reported refunds for our taxpayers that were significantly higher than they should have been - taking money away from the rightful claimants of the tax credits.

**No Clear Price Estimate.**

Most of the preparers did not give the testers price estimates for preparation ahead of time. Most commercial tax preparers base their pricing by form, and thus claim they cannot provide an estimate before preparation begins. This failure to provide clear pricing makes comparison shopping difficult.

From: Ellen Marshall  
Sent: Monday, August 31, 2009  
Subject: Notice 2009-60: Comments of Jackson Hewitt Tax Service Inc.

Please find attached the comments of Jackson Hewitt Tax Service Inc. on Notice 2009-60. If you have any questions or encounter difficulty in retrieving the attachment, please contact me directly. Thank you.

Ellen B. Marshall

Consultant to Jackson Hewitt

JACKSON HEWITT TAX SERVICE INC.

COMMENTS ON

STANDARDS OF CONDUCT FOR THE TAX RETURN PREPARER COMMUNITY

AND INCREASED TAXPAYER COMPLIANCE

(NOTICE 2009-60)

AUGUST 31, 2009

### **I. Introduction**

Jackson Hewitt Tax Service Inc. ("Jackson Hewitt"), based in Parsippany, New Jersey, is the second largest paid individual tax return preparer in the United States with approximately 6,600 franchised and company-owned offices throughout the country. Jackson Hewitt is an industry leader providing full service individual federal and state income tax preparation. In 2009, our network prepared 2.96 million tax returns. Over 90% of those returns were electronically filed. Our network is principally focused on providing customers with convenient and quality federal, state and local income tax return preparation services and electronic filing. Through the use of our proprietary tax preparation software, we provide a comprehensive computerized individual tax return preparation experience designed to ensure accuracy. Jackson Hewitt requires its preparers to undergo annual education in changes in the tax law as well as ethics training. We recognize that tax compliance is a serious issue and the company regularly engages in substantive discussions with the Internal Revenue Service about enhancements to our software and practices that will further the government's compliance objectives.

### **II. Background**

The IRS has announced an effort to develop a comprehensive set of proposals to provide consistent standards for tax preparer qualifications, ethics, and service. Certainly, this effort is driven by a desire to increase tax compliance and ensure all taxpayers have access to quality tax preparation services.

The tax preparation industry has undergone dramatic change. An industry once dominated by traditional bookkeepers has expanded to include commercial tax preparation firms, credentialed professionals (e.g. certified public accountants, enrolled agents, attorneys, and others), off-the shelf software programs, and community volunteers. At one point in time, the majority of taxpayers completed their own individual tax return. Now, nearly 60% turn to a paid preparer to provide them assistance.

Taxpayers should receive competent tax preparation services regardless of the type of preparer or commercial product they use and, except in rare cases, they do. There is, however, a level of inconsistency across the tax preparation industry with respect to compliance with the tax laws. Some tax preparers and preparation companies have procedures and mechanisms in place to monitor tax laws and the conduct of tax preparers while others do not. It is widely known that some taxpayers "shop" tax preparers seeking out those with less stringent standards so that they may file their returns without being required to answer diligence questions or provide required documentation, most notably their W-2s. Whether the majority of inaccurate returns are the result of incompetent preparers, unintentional taxpayer errors, or fraud perpetrated by the preparer or the taxpayer (or both) is still a question of some debate.

While Section III of our comments details Jackson Hewitt's specific recommendations on uniform standards for tax preparers, we believe the IRS must adhere to the following principles if it formulates recommendations:

- Consistency. The standards should apply to all tax preparers, regardless of their professional background or perceived competency.



- **Administration.** The standards should be easily administered by, and from within, the IRS. Concurrently, the standards should not exact a financial or compliance burden upon tax preparers.
- **Resources.** Prior to launching any program, the IRS (and Congress) must ensure ample resources are appropriated to allow for a smooth transition.
- **Education And Ethics.** All preparers should be required to pass mandated education courses and ethics training.
- **Compliance and Fraud Prevention.** Current due diligence requirements should be strengthened to insure all paid return preparers meet or exceed minimum standards of tax compliance and fraud detection/prevention.
- **Enforcement.** The new standards should be strictly enforced. Standards without enforcement will quickly undermine the system and the taxpayers they were designed to protect.
- **Review and Revision.** Implementation should also provide for regular review of the efficacy and efficiency of the standards and the degree to which the standards have increased tax compliance.

### **III. Specific Recommendations**

Jackson Hewitt supports the implementation of a uniform federal standard of qualifications, ethics, and service for all paid preparers supported by appropriate monitoring and enforcement. We would expect these same standards to also apply to organizations and companies that create tax return preparation software for commercial use.

If the IRS determines that it will pursue implementation of preparer qualification, ethics; and service standards, Jackson Hewitt respectfully requests that it take the following points into consideration:

**A. Federal Standard.** A federal standard should be established for qualification, ethics, and service of tax preparers. A single, uniform standard will simplify the registration process for preparers and ease administrative and enforcement procedures for the federal government. Taxpayers will also be well-served by a federal standard as it establishes a single source for monitoring taxpayer complaints and speeds the resolution of issues relating to unscrupulous preparers.

**B. Structure.** Jackson Hewitt supports the creation of an oversight structure within the Internal Revenue Service to develop, administer, and enforce a qualification, ethics, and service standard for paid tax preparers. We recommend this type of structure for several reasons. First, expediency - once the parameters of the oversight structure are established, the existing knowledge base and operating procedures already in place within the IRS allow such an organization to be formed and functional in a short amount of time, avoiding the delays and political posturing that could occur in forming an external organization. Second, cost effectiveness

- the amount of federal appropriations needed to establish the operation could be held to a minimum by utilizing existing resources to support the start-up of the oversight structure. (Ongoing operating revenues would be generated from registration fees generated from paid preparers - see Section C., below.) Third, enforcement - an internal IRS oversight structure would reduce potential conflict in enforcement activities. The IRS Offices of Professional Responsibility and Criminal Investigation currently assume responsibility for management of and enforcement actions in cases involving tax fraud. If the primary mission of a preparer qualification, ethics, and service structure is to increase tax compliance and reduce fraud, it makes good sense to create a new entity within the IRS (or expand the jurisdiction of those with enforcement responsibility) to accomplish this goal. An internal IRS entity also protects the privilege and confidentiality of information in ongoing enforcement actions and provides a central location (easily identifiable to taxpayers) for collection of taxpayer complaints and requests for investigation.

**C. Funding.** Funds to establish the initial structure for the system should be appropriated from the federal government. Ongoing operating expenses may be secured through a reasonable fee imposed on the registration application for all paid preparers. The assessed fee should be modest to cover only essential services of the operating organization. The imposition of a modest fee will make it less likely that paid preparers will pass-through the cost of their registration to their customers. In addition, in an effort to grow the ranks of certified preparers, the fee should be

modest in size so it does not act as an impediment to encouraging individuals to become tax preparers.

D. Registration. All paid tax preparers should be required to obtain a registration number and include it on every electronically-filed or paper return they prepare. Due to the mobility of the preparer workforce in the commercial preparer industry (i.e., some preparers tend to move from location to location or from company to company over a span of several years), a registration number should be unique to the preparer and not identify the preparer to a particular company or franchise location. The Internal Revenue Service should establish a central registration system to complete this task and also establish an online database of registered preparers which will serve as a mechanism for taxpayers to confirm the preparer they have chosen has fulfilled his/her obligations regarding qualifications, ethics, and service.

E. Education/Certification. Annual education/certification requirements should be established for all unenrolled, non-credentialed preparers. Enrolled agents should be exempt from this requirement. Credentialed preparers (e.g., tax attorneys, certified public accountants, and others) should be required to provide proof of compliance with their profession's current continuing education requirements in tax law in order to obtain a preparer registration number. We encourage the Internal Revenue Service to examine current education programs established by professional organizations and commercial preparers - as well as its own internal program for volunteer income tax preparers - to arrive at a hybrid education/testing mechanism that provides an adequate scale upon which to measure the competency of paid preparers.

F. Ethics. Ethics training and compliance regulations should apply to all paid preparers.

G. Enforcement. Adequate and measured enforcement of qualifications, ethics and service rules and regulations should be a primary focus of this effort. Strict monetary penalties must be imposed for non-compliance, and enforcement actions in instances involving fraudulent activity should be swift. In addition, the IRS should implement procedures to encourage operators of tax preparation companies to work in partnership with the IRS to insure that preparers in their employ are in compliance with established requirements.

H. Review and Data Collection. It is essential that the efficiency and effectiveness of qualification, ethics, and service requirements for paid tax preparers be regularly reviewed and its operations adjusted to preserve its original mandate and the best interests of taxpayers. At the outset of this effort, one of the most common frustrations voiced by Internal Revenue Service officials is that the number of paid preparers operating in the United States is not known. Thus, the data collected on paid preparers through this effort may be helpful not only in answering simple questions regarding the number of active preparers but also in targeting areas for improvement in both tax preparation and federal tax administration.

I. Fraud Prevention and Compliance Monitoring. Due diligence requirements should insure all paid return preparers meet or exceed minimum standards of tax compliance and fraud detection/prevention. Due diligence requirements should be designed to bolster efforts for self monitoring by paid tax return preparers and encourage participation in a partnership between preparers and the Internal Revenue Service in the ongoing effort to combat tax fraud.

#### **IV. Conclusion**

Jackson Hewitt supports the implementation of a uniform federal standard of qualification, ethics, and service for all paid tax return preparers supported by appropriate monitoring and enforcement. All paid preparers should participate in - and abide by elements of these requirements regardless of their level of professional expertise. We urge the Internal Revenue Service to use these new standards as the basis for establishing a partnership between paid preparers and the Internal Revenue Service in the effort to improve efficiency and compliance in the tax system. However, the most essential element of this effort must be enforcement - any standard that does not include a strong enforcement mechanism is a standard that will quickly become ineffective or inoperable.

We look forward to working with the Internal Revenue Service on this important issue.

**From:** Nancy Nabors  
**Sent:** Monday, August 31, 2009  
**Subject:** Notice 2009-60 Tax Return Preparer Review

Regarding the IRS Notice 2009-60 of July 24, related to performance standards of tax preparers, please do not create another layer of government bureaucracy.

If tax return preparers do not perform properly, penalize them - severely if necessary.

If tax return preparers do not perform properly, do not allow them to prepare any tax returns.

Strict rules, strict enforcement, and severe penalties when necessary, that is the way to improve preparer performance. Please understand that our government does not need another layer of bureaucracy. I believe the government is far too big and inefficient today. If you add more

bureaucracy then you get more spending, bigger government with more inefficiency.

Our country is going bankrupt! Can't you see that? Please quit spending taxpayer money so

freely. If you want to spend money freely, then spend your own money!

Again, strict rules, strict enforcement, and severe penalties for incompetent and/or fraudulent tax return preparers.

Please quit expanding government and spending more money. Unless this behavior stops, I believe there will sever political repercussions.

Can't you understand that this mentality of more bureaucracy, more spending is bankrupting our great country and mortgaging the future of our country's youth.

How contemptible!

I respectfully request that you do not add more spending and bureaucracy in your review of the tax return preparer. As I have indicated, there are other ways to have compliance regarding the performance of the tax return preparer.

Please do not continue spending taxpayer money and adding more bureaucracy. If you can't do this for me, please do it for our youth. They deserve a future without this enormous, enormous, enormous, debt that our country is accumulating.

Sincerely,  
Cary Nabors

August 31, 2009

Douglas Shulman  
Commissioner

Dear Mr. Shulman and Ms. Butler:

This letter is in response to your request for comments regarding the Internal Revenue Service's review of issues concerning tax return preparers as set out in Notice 2009-60. Grant Thornton LLP assists a wide range of clients, including thousands of individuals, in fulfilling their Federal state and local tax compliance responsibilities. Grant Thornton LLP is the U.S. member firm of Grant Thornton International Ltd, one of the six global audit, tax and advisory organizations. The comments in this letter represent the opinions of Grant Thornton, LLP and not the opinions of Grant Thornton International Ltd., or any of its other member firms.

Grant Thornton believes that tax administration and the tax-paying public would be well served by a national registration system for paid tax preparers to be administered by the Internal Revenue Service. In combination with a minimum set of requirements and an annual certification, a national registration system would help assure taxpayers who choose to employ a preparer that their preparer is in good standing and meets minimum standards regarding a current understanding of the tax rules and the ability to apply them in an appropriate and ethical manner. The tax system itself would benefit from more confidence in the validation of qualified return preparers.

The complexity of the current Federal tax system has created a situation where many taxpayers are unable to prepare their own returns. The General Accounting Office reported that nearly 78 million of the 127 million individual income tax returns filed during the 2006 filing season were prepared by paid tax return preparers.<sup>1</sup> The primary goal of a registration system for paid tax preparers should be to insure the availability of competent and ethical assistance to taxpayers who desire help in preparing their tax returns and to give taxpayers desiring such help confidence that their preparer meets necessary standards. However, the registration system must also be carefully designed to minimize the additional burden on taxpayers, both in cost and access to qualified return preparers. Registration requirements that are onerous may have the effect of removing well-qualified preparers from the tax system.

All signing tax return preparers who are compensated for their efforts should be required to register and to disclose their registration number when signing a return or signing or preparing any other document in representation of a taxpayer with the Internal Revenue Service. Registration should be conditioned on the presentation of evidence indicating a current knowledge of the Federal tax rules and procedures. Registration could be revoked on a determination that a paid preparer failed to discharge his or her responsibilities in an ethical and competent manner, with a system of warnings and intermediate sanctions established so that registered preparers can self-correct any inappropriate behavior. An individual or firm employing a registered preparer or allowing a paid preparer to use its name in connection with the marketing or performance of tax return preparation activities (an "associated preparee") should be also be required to register and should be responsible for the actions of its employees and associated preparers.

Grant Thornton does not believe that passing a nationwide examination should be required for registration. Participation in relevant educational activities should be the preferred method of establishing current knowledge of the Federal tax rules. Additionally, those requirements should be phased in over a reasonable period. This would allow all paid preparers an opportunity to establish their credentials.

The evidence required to establish a current knowledge of the Federal tax rules should focus on current knowledge. The educational requirement should insure that the registrant is familiar with current tax law, understands how to access guidance published by the IRS, can apply the procedures necessary for making a complete and accurate return, and appreciates his or her ethical responsibilities. It may be appropriate to require that a minimum number of hours of study

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<sup>1</sup> GAO Report to the Committee on Finance, U.S. Senate, Tax Preparers, Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides a Possible Model for National Regulation, GAO-D8-781

in each of these areas be undertaken annually and to establish a minimum number of hours of study in all areas that must be undertaken over an extended period.

Courses satisfying the education requirement should be available from as wide a range of sources and in as many different formats as possible. For example, it should not matter whether courses are delivered in a face-to-face format, through webcast or other remote transmission, or through self-study. The IRS should establish procedures for approving acceptable courses for satisfying the educational requirement. Approval of a course as satisfying a tax-related requirement by a state licensing board<sup>1</sup> should be respected for this purpose unless it is affirmatively shown that the policies of the state licensing board are insufficient for this purpose. The IRS may wish to consider providing courses itself. In order to insure that multiple points of view are presented, the multiple-year education requirements should not be satisfied through IRS-provided courses exclusively. However, it might be appropriate to require all registered preparers to participate in an IRS-provided course at the beginning of tax season that highlights new provisions for the current filing season, common errors from past filing seasons, changes to the forms and areas of increased IRS scrutiny.

As the primary goal of a registration system for paid tax preparers should be to insure the availability of competent and ethical assistance to those taxpayers who desire help in preparing their tax returns, registration should be denied to those who fail to discharge their responsibilities in such a manner. It is recommended that the ethical requirements generally follow those set out in the AICPA's Statement on Standards of Tax Practice and applicable aspects of Circular 230. At a minimum, they should require registered preparers to take tax return positions that meet the standards of IRC section 6694 as applied to non-tax shelter transactions, to disclose any potential conflicts of interest to their clients.

Where the evidence indicates the preparer is failing to discharge his or her responsibilities in a competent and ethical manner, a system of warnings and intermediate sanctions should be established so that registered preparers can self-correct any inappropriate behavior before facing the loss of registration. Certain conduct may be so egregious, however, that warning or intermediate sanctions would not be appropriate. It may be appropriate to establish an independent arbiter, possibly within the office of the taxpayer advocate, to whom any sanction or loss of registered status could be appealed.

Several states have already implemented registration systems. Generally, these systems have exempted certified public accountants, licensed attorneys and enrolled agents from the registration system. Grant Thornton believes that all paid preparers, including CPAs, attorneys and enrolled agents, should be subject to a registration system. Where the standards established for these professionals equals or exceeds the standards to be established by the IRS for registered preparers, satisfaction of those standards should be accepted as sufficient to support registration. Where the standards established for licensing these professionals falls short of the standards to be established by the IRS for registered preparers, a procedure for addressing any shortfall should be established.

We appreciate the opportunity to comment on this important matter and look forward to further dialogue as this issue develops. We would be pleased to discuss our comments and recommendations with you. If you have any questions, please contact Mark Stutman, National Managing Partner of Tax Services.

Sincerely,  
Grant Thornton LLP

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<sup>2</sup>For this purpose, a state licensing board is intended to include any court or state agency that is authorized to license individuals and entities in the practice of law or public accountancy.

August 31, 2009

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2009-60).

Re: Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance (Notice 2009-60)

The National Association of Enrolled Agents (NAEA) appreciates the opportunities IRS has offered to provide input to the Service as it works to produce recommendations to increase return preparer accuracy and protect taxpayers from those who cannot or will not interpret Title 26 correctly. As the organization representing the interests of 46,000 enrolled agents, NAEA is well positioned to offer an informed and practical perspective about how to increase a taxpayer's confidence that his/her return preparer is producing a true, complete and accurate tax return. Enrolled agents have for some time supported efforts-legislative, administrative, or both-to provide oversight to the widely unregulated tax preparer community. We are driven by the fundamental truth that Americans who pay a "professional" ought to get a professional return. As I write these comments, many Americans unfortunately cannot be reasonably assured that a given paid preparer will indeed produce an accurate return. Not to put too fine a point on it, enrolled agents believe that is wrong.

NAEA believes to protect taxpayers and the tax administration system federal policymakers should provide national standards for all paid return preparers and oversight of the entire community. NAEA's tenants are well known and while we included them in prepared comments given on July 30, 2009 by our past president and Government Relations Committee chair Frank Degen, EA. They bear repeating here:

- **Competency:** Taxpayers would have a reasonable expectation of competency if preparers are subject to initial testing, annual continuing education requirements, background checks, and strong ethical standards. The absence of an initial competency test could place taxpayers in a worse position than currently exists, as taxpayers will assume a preparer holding a federal license has at least demonstrated minimal Competence.

- **Centralization:** Any program should build on the existing regulatory framework and consolidate administration and enforcement under the Office of Professional Responsibility. Centralization would create a variety of benefits: a single ethics code; coordinated exams that would allow for advancement within the profession; and, standardized continuing education requirements all administered under the already existing system.

We strongly oppose the establishment of a separate IRS division to provide oversight to some but not all preparers or any type of quasi-governmental entity to oversee the newly regulated.

Consolidation within the agency should ensure uniformity of standards and enforcement for all return preparers and necessary privacy for taxpayer information.

- **Adequate resources:** The most pragmatic element for any program is adequate resources for administration, promotion and enforcement. It is not unreasonable or unusual for professionals to pay for their licenses attorneys pay for their licenses, certified public accountants pay for theirs, and EAs pay for theirs, too. OPR should retain all registration fees for administration of the program, including policing all practitioners and preparers under their jurisdiction.

NAEA urges IRS to remember that a rigorous oversight regime is not an end in and of itself. The point of the exercise should always be to protect taxpayers from the incompetent and corrupt.

Some in the tax arena have proposed preparer registration as a reasonable approach to increasing taxpayer confidence in paid preparers. NAEA remains concerned about providing each preparer with a unique identification number, not because it is a bad idea (it isn't) but because we don't want to see "a PTIN for every preparer" as the solution to our problem. We have waited too long for a serious discussion and for meaningful change. If the Service declares victory by assigning each preparer a PTIN (or EFIN, for that matter), it fails to provide taxpayers any assurance of competence, which is the *sine quo non* of regulation. A preparer number conceivably creates a world in which preparers lead taxpayers to believe the mere presence of a number indicates proficiency.

A preparer number no more denotes competency than does years of preparation experience.

Amongst the reasons a central IRS authority responsible for return preparer behavior is desirable is that ethical, competent preparers will be assured of consistent oversight and that taxpayers and tax preparers alike will be assured of privacy and security of sensitive taxpayer information. Earlier this summer, however, the Service issued a contracting document asking a limited number of vendors to define, design, and stand up a self-regulatory organization (SRO). While we appreciate that the agency withdrew the request for quotation and that the agency's senior executives insist they have no preconceived solutions, we remain troubled by a SRO solution and that some in the agency may be biased in that direction. Enrolled agents are concerned that an SRO's enforcement ability will pale in comparison to IRS' enforcement ability (e.g., preparer penalties, court injunctions, etc.). Enrolled agents are also concerned that the disclosure issues (e.g. § 6103) raised by an external oversight body are significant.

We suggest that the strength of oversight program would be increased by creating an avenue by which preparers can report those who either are not signing returns or who are unwilling and/or unable to apply the tax code correctly. NAEA members report a significant amount of frustration in being unable to protect taxpayers by removing the proverbial "bad apples" from the barrel. The current return preparer complaint program, as the Treasury Inspector General for Tax Administration reported iii earlier this year, does not inspire confidence and must be improved significantly.

Providing a structure that requires paid preparers to demonstrate initial competency (and ongoing competency through continuing education) and that vests a central IRS authority with the resources necessary to provide discipline is critical. At the same time, to omit a strong public education program is to doom the enterprise. Taxpayers will of course remain responsible for the accuracy of their returns. In all likelihood, they will in practice continue to rely heavily on their return preparers. Taxpayers, however, must understand the license held by their preparer (i.e., which returns a preparer is permitted to complete) and need to be informed of the simple ground rules. To wit, a paid preparer must:

- demonstrate (s)he is either a Circular 230 practitioner or a newly regulated preparer; and,
- sign any return (s)he is paid to prepare.

Finally, NAEA suggests that the new examination must be given considerable thought. This examination will be the hurdle all preparers must clear in order to prepare the basic returns filed by millions of Americans. To be clear, we do not for a moment believe the examination need be as comprehensive as the examinations passed by Circular 230 practitioners. While we leave specific content to IRS, we believe the test must at a minimum require the preparer to demonstrate competency in fundamental tax calculation issues (e.g., earned income tax credit, child care credit, education credits, basis, and mortgage interest IV). The examination should be the responsibility of IRS to create and administer, much as the special enrollment examination is.

A meaningful oversight regime presents the Service with a significant opportunity both to increase tax compliance and to level the playing field for all paid preparers. Bringing order to the paid preparer universe is not a trivial undertaking.

The preparer community will need to demonstrate patience during what could be a lengthy transition period. The IRS will need to be vigilant and guard against the temptation to make decisions based on what is expedient for the agency (or for preparers) rather than on what is right for taxpayers.

In closing, we offer the following practical suggestion: when the dust settles, the sheriff needs to be back in town and taxpayers must be reasonably assured that their paid preparer is competent and ethical.

NAEA appreciates the opportunity to submit comments on Notice 2009-60, return preparer standards of conduct. Should you seek further clarification or explanation of our positions, please contact NAEA's Senior Director, Government Relations, Robert Kerr,

Sincerely,  
Sandra Martin, EA  
President

i As the Governmental Accountability Office has recently found in one of its tax preparer audits, a well constructed oversight program can result in higher compliance rates, but a weak program without an initial competency exam can actually result in lower compliance than the national average. See GAO-08-781, "Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides a Possible Model for National Regulation."

ii Given the current budget environment, dollars should come from paid preparers, not from the fisc.

iii "The Process Taxpayers Must Use to Report Complaints Against Tax Return Preparers is Ineffective and Causes Unnecessary Taxpayer Burden"

(<http://www.treas.gov/tigta/auditreports/20Q9reports/200940032fr.pdf>) February 24, 2009

(Reference no. 2009-40-0(2))

iv The new Schedule L ("Standard Deduction for Certain Filers") and Schedule M ("Making Work Pay and Government Retiree Credits") would also clearly fail in the category of fundamental tax calculation issues. See the August 28, 2009 Forbes piece by Janet Novak, "Tax Time Torture Worsens,"



From: Fran (Francesca) Prokos  
Sent: Monday, August 31, 2009  
Subject: Notice 2009-60

I have been a tax preparer for 19 years. I am an accountant, not a CPA.

I believe that I am a better tax return preparer than most of the CPA's I meet. Most of them have been trained and or work for very large corporations and are responsible for a very small function of an accounting area, usually having nothing to do with tax return preparation.

More importantly, they do not understand the INTENT of the tax law. Their employer more than likely employees a very large CPA firm for the tax preparation. (More comment on those firms later.) I have a few CPA acquaintances who call me often to ask if this or that is taxable or deductible. They don't even understand the basic principle that any business income/gains are more than likely taxable, and only the necessary and customary expenses associated with such are deductible. They may be well versed in leases, SEC regulations etc, but not on tax return preparation. I believe that any paid preparer who signs a tax return should be required to enter a PTN or SSN on the tax return.

The IRS needs to tie that to a data base that shows if this preparer has passed a basic, (however we want to define "basic") test, where this individual has personally stopped in at a testing center or the local IRS office (not on line, as that may at present be manipulated as to who actually takes the test) and has taken and passed this tax return preparation test. We may want to have two or three levels, Le. Individual, Entity, or Fiduciary type of returns. I feel it paramount that the IRS, not CPA or Attorney designations say who has passed a tax preparation exam.

Unless we have such a test, I am afraid that in this labor market with high unemployment we will have a lot of CPA's who know nothing about taxes or a lot of attorneys who practice in areas totally unassociated with tax start preparing tax returns, even representing taxpayers in front of the IRS. Then when the economy turns around, they will go back to their CFO positions in corporate and you will not have enough preparers bringing taxpayers to compliance if you, through new regulation put the small preparer out of business. If the IRS stays with the decision that the CPA and attorney designations have free reign to practice and no tax testing is necessary, and if a preparer must be a CPA or attorney, this will put smaller preparers like myself who have been faithful to the IRS for many years out of business.

The real harm from that will be that most of my type of clients, smaller businesses and individuals will stop filing and become delinquent.

A major part of my job is to constantly call clients to come in and file their taxes. Tax filing deadlines is the furthest thing in the mind of a small business person who is trying to survive in business. Without the constant reminders, something that a high paid CPA or attorney will not bother with, these taxpayers become delinquent. They will not/cannot pay the higher prep fees of the CPA or attorney either. I work out of my home, they can afford me.

I work endlessly, many times even un crumpling and separating receipts and bank statements these clients bring in, usually in a shoe box. I do not have the time nor funds to prepare for and take the CPA exam and for what?

Even though I have taken many advanced accounting courses towards a CPA degree, very little in the CPA review deals with preparing tax returns. I love the tax code, get it, understand it. You make available the tools necessary for all tax return preparation in your literature. My love for the tax code and my experience, not the CPA review, has made me a good tax return preparer.

I would say that if we were not headed towards mandatory electronic filing, that a preparer should at least have two years of accounting education. Since electronic filing requires a tax program which does the basic calculations, the most important qualities of a tax preparer these days are logic, and the ability to follow the tax code and publication instructions carefully, and to understand the subtle difference, I would say for example, between allowed or allowable, passive or with active participation, Sec. 1244 stock qualifications, spin offs, extraterritorial income exclusions, just to name a few, and to even be aware that these mayor not be available. Many similar words in the publications may mean the same to the novice, but they make a huge difference between preparing the return correctly or not.

In this free market society, a business or individual who can afford a CPA or attorney will seek and hire one. The danger to the IRS is that the larger CPA or law firms spend a lot researching gray loophole areas, costing the IRS (me, the taxpayer.) Look to the example of the over-sea

bank accounts, creative entity formations and the like to see what I mean. Where was the logic of foreseeing the unintended consequences for our society of "mark to market" or Sarbanes Oxley? The same applies here, and I highly commend you for having the wisdom to ask small preparers like myself for our input. We have our finger on the pulse of the average taxpayer. The public is now very frustrated with government and the like. They do not see the wisdom or the justice attempted in the tax code. They complain that it is too immense. It is paramount that we keep any changes simple. Here is a proposed outline:

--All tax preparers must pass a basic tax preparation test based on tax code, rules, regulations and publications. CPA's and Attorneys NOT exempted.

A nominal cost of this to cover the expense to the IRS should be borne by the applicant.

--The public should be educated not to pay anyone without this certificate to prepare their tax returns. This certificate should list if the preparer is licensed to prepare Individual, Entity, Fiduciary or all returns.

--The IRS should summarize all the changes for the year each year in one publication, and the preparers must take an on line test based on that each year.

They will attest that they personally are taking this test, and will pay a nominal fee which will be their license renewal fee. (This yearly renewal fee works very well with occupational licenses and will defray the cost of licensing to the IRS.)

--Ethics can also be addressed very easily in this electronic era. Just like my program won't allow me to e-file a return without the e-file authorization form 8879, tax software companies can keep the return from printing or e- filing without an ethical statement form signed by both the preparer and taxpayer, outlining that all amounts came from the taxpayer, include all income and expenses for the year, only appropriate expenses as

explained by the preparer have been deducted, etc, as you may see fit when drafting the acknowledgment. Then the burden falls on both the taxpayer and the preparer to conduct themselves ethically, and the IRS will only have to scrutinize any manually filled in returns, but even those should be required to have this ethical statement attached to them.

All affiliated with the preparation of the tax return should be held responsible to high ethical standards of conduct, propriety and ethical behavior. The preparer signing the return, the firm that employs him/her and the

officers/partners of such firm. In a profession where the individual performing the task is the skilled professional, there should be no hiding behind corporate shields, etc. Just like doctors, contractors, etc. In the same spirit, the partners should not be exempt from responsibility by having a subordinate sign. No scapegoats. Professional associations and organizations are social and political in nature. IRS can take input or comments

from them, but should not look to them for licensing or responsibility. The responsibility should fall on the paid preparer, emphasis on the PAID, just follow the money.

It is so easy for the IRS to now electronically have a listing of all licensed preparers that the public can access. They can even have a listing of grievances against each preparer. Why be held captive to a political group. They scare me. You can be the best, most competent preparer and if the "clique" decides against you, you're out. I don't endorse such behavior, and neither do many CPA's who have given up on audit or peer review because of such politics. The tax code is constantly changing, and many CPAs have confessed that if they had to take the test today they could never pass it. Don't let them make your decision for you to their benefit only.

Tax return software providers are already "regulated". Every time one of us prepares a return, if our provider's software program makes a mistake, they just lost a customer. They know better but to employee the most competent, knowledgeable tax professionals when writing their programs otherwise they would be out of business. No one wants to sign an unethical, incorrect return, so we keep them in check. Yes, all tax preparers should be regulated, but not to the extent that it puts the ones who have many years of experience in the field out of business just because they are not CPA's Attorneys, or Enrolled Agents. Despite efforts of the AICPA and attorneys to let them be the only ones allowed as preparers, the IRS thus far has been very wise to let anyone send in a return to them. Isn't logical that they will get more returns that way?

Their own system usually will flag most discrepancies. Why keep the small taxpayer who can't afford attorneys or CPA's out of the system? It would be a tremendous expense to the IRS chasing down these taxpayers. The small preparer is doing that work now for the IRS because we need the business and we are the only ones this small taxpayer can afford. If we get taken out

of the picture, the CPA firms will only increase their fees, forcing the small taxpayers to file their own with many mistakes, or not file at all. How much will that cost all of us? It would be to the benefit of all of us if IRS was left to concentrate on auditing and finding large tax evasion cases. That type of taxpayer does not hire a small tax preparer but has more than likely been orchestrating that evasion with the assistance of attorneys or CPA's. Usually the small tax preparer is a friend of both the IRS and the taxpayer, working for fair and just compliance. It is not like before the PC where CPA firms were the only ones with the tools available for complete research.

The preparer working out of his home office now has access to the same research the big firms have. For less than \$1,000 per year we can buy a professional tax software program that allows us to file any type of federal and state tax return. Thanks to the internet we can also research any issue.

--In case the big CPA firms and their lobbyist win to not let anyone else but themselves and their attorneys prepare returns so no one else competes with them for fees, I highly pray that preparers who have prepared at least 25 returns during each of the past five years get grandfathered in, and allowed to continue preparing tax returns and answering for such and representing the taxpayer during an audit of such.

Thank you for the invitation to voice my comments.  
Fran (Francesca) Prokos  
Accustar Accounting Inc.

August 31, 2009

CC:PALPD:PR (Notice 2009-60)

Subject: Notice 2009-60 - Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance

Dear Sir or Madam:

Intuit Inc. ("Intuit") is pleased to have the opportunity to submit these comments in response to Notice 2009-60 (Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance) published by the Service on August 10, 2009. We appreciate the Service's efforts to solicit broad stakeholder input, and will supplement these comments with our more detailed written and oral statements delivered as a member of the Software Industry Panel at the IRS Public Forum in Chicago on September 30, 2009.

Most importantly, we applaud the Commissioner's goals of leveraging the tax return preparer community to increase taxpayer compliance and ensuring uniform and high ethical standards of conduct for tax preparers. The time is right for this initiative.

Taxpayers have a broad range of available methods to choose among when they prepare and file their income tax returns, including branded chain preparers, small business tax practitioners and CPAs, and both manual and computerized forms of self preparation. IRS data suggest that more than 60% of all US individual income tax returns are professionally prepared, while roughly 40% are self prepared (approximately 10% manually prepared on paper, and approximately 30% are prepared using "do it yourself" tax preparation software).

The role and importance of the electronic tax preparation and filing industry has grown steadily over the past many years. It has been said that the innovations delivered by the American technology industry have fundamentally reinvented tax compliance and tax administration in this country, and there is much truth to that observation. This is not only an industry that delivers significant innovation, but it is by its nature a highly competitive industry. A significant number of companies now develop and market consumer and professional tax preparation software and utilities. In the consumer software segment alone, we estimate over thirty companies offer online solutions that enable taxpayers to self-prepare their returns easily and at less cost than other assisted alternatives. This environment benefits consumers in many ways, including sharply reduced compliance burdens, reflected in both costs and time. The Service has also benefited significantly from more accurate tax returns and a significant growth in electronic filing, both of which have reduced the operating costs of tax administration.

Intuit brings deep knowledge and experience to the Service's review of electronic tax preparation and filing. We have been participating in the electronic tax preparation and filing industry for over 25 years. We innovate, develop, market and support the *TurboTax*® brand consumer tax preparation products - both "boxed" and online hosted software - as well as the *Lacerte*® and *ProSeries* brands professional tax preparation software. We have a legion of CPAs, enrolled agents and certified professionals who work on our TurboTax consumer product alone. Intuit is proud of its efforts to help both consumers and professionals prepare and file millions of federal and state tax returns accurately, securely and reliably every year. We adhere to the highest standards of excellence in our products and their performance. This is a core part of who we are as a company. It is our bond with our customers, and with the US tax system as well.

Because of this institutional commitment, we also agree with the GAO recommendation that the time is right to review both the benefits and risks of the overall electronic tax industry. Given industry's increasingly vital role in electronic tax administration, we agree with the Government Accountability Office's (GAO) recent recommendations for the Service to assess the risks of electronic tax industry with a focus "in the areas of tax return accuracy, the security and privacy of taxpayer information, and the reliability of electronic filing" (See GAO Report GAO-09-297, February 2009).

Notwithstanding the complexity of our tax code and technology, there must be reasonable assurance that electronic tax administration software and systems will deliver accurate calculations, protect the confidentiality of tax return information, and operate securely and reliably under highly variable volume demands. Successfully delivering for taxpayers in these areas requires qualified people, rigorous process and leading technology investment and innovation. Success also requires clear (and high) standards, and an industry and individual enterprise commitment in the form of both resources and management attention.

As it evaluates the electronic tax area, the Service should consider several guiding principles, including:

- Any standards and oversight model should leverage existing, proven oversight models and industry practices, organizing these standards and regulations in a cohesive and thoughtful manner.
- Any new standards should focus on high level requirements and controls (such as those found in common security frameworks like FISMA and ISO 27002), rather than set overly prescriptive requirements that would unnecessarily inhibit further industry research and innovation.
- Any standards must recognize the role and accountability of other stakeholders, including preparers and taxpayers.
- Any oversight model must not disable the ability of tax software companies to move very quickly in a highly dynamic environment, which is a particular strength that the high technology industry has brought to the process of compliance within the US tax system; this continued ability will be critical in effectively responding to late passing legislation and evolving taxpayer needs in the future.

Again, Intuit is pleased to have the opportunity to submit these comments for your consideration, and to participate in the September 30<sup>th</sup> Software Industry Panel in Chicago. We will amend our written comment filing at that time, providing the full text of our testimony for your consideration.

Please contact me directly with any questions or to further discuss these comments. We would look forward to assisting and supporting the Tax Preparer Review process as it proceeds to recommendations and implementation.

Sincerely,  
Bernard McKay  
Chief Public Policy Officer, and  
Vice President, Corporate Affairs  
Intuit

From: Peter N. Calcara  
Sent: Monday, August 31, 2009  
Subject: Notice 2009-60

Attached, please find, on behalf of the 20, 000 members of the Pennsylvania Institute of Certified Public Accountants (PICPA), our comments on Notice 2009-60, Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance.

Peter N. Calcara | Vice President - Government Relations

Pennsylvania Institute of CPAs | PICPA. Experience the Value! Pass it on-promote your profession and share PICPA student and educator resources or contribute to the PICPA Scholarship Fund.

The opinions expressed herein are my own, and do not reflect those of the Pennsylvania Institute of Certified Public Accountants, or the Institute/Foundation's officers, members or employees.

PICPA  
Federal Tax Committee Position Paper  
Standards of Conduct for the Tax Return Preparer  
Community and Increased Taxpayer Compliance

## **Section I: Executive Summary**

PICPA appreciates the opportunity to provide comments regarding standards of conduct for the tax return preparer community and increased taxpayer compliance, as requested in IRS Notice 2009-60. The following Pennsylvania Institute of Certified Public Accountants (PICPA) document is intended to respond to specific questions raised in that request and to provide recommendations for enhanced tax return preparer conduct and increased taxpayer compliance. Our objectives in providing this response are enumerated under "Purpose and Scope," Section II of this position paper.

Section III, "Current State of the Tax Return Preparation Market" (Current State) describes the market for tax return preparation services, providing data on the size of the market and the providers of tax return preparation services. The Current State section describes three "Reality Check" issues that PICPA believes are germane to the IRS request in IRS Notice 2009-60. Those three issues are:

- Complexity of the Internal Revenue Code
- Shifts in ethical constructs of the Millennial Generation
- The Tax Gap

Current State also describes the interlocking system of tax return preparer regulation, focusing on the three schemes of federal regulation and how they work with the *Pennsylvania CPA Law* and other professional organization oversight.

The next eight sections provide responses to specific questions or cross-reference the location of our response in the Current State section. These eight sections are:

- Variability of Interaction with IRS and Taxpayers by Each Type of Tax Preparer
- Education and Training Requirements and Enforcement
- Service and Outreach Recommendations for Tax Return Preparers and Taxpayers
- Construct of a Code of Ethics and Enforcement
- Entity-Level Responsibility for Preparer Conduct
- Professional Organization Oversight, Services for Members, and Control
- Provisions to Recognize Individuals Already in Tax Practice
- Statutory, Regulatory, and Administrative Recommendations

In the last section, "Conclusions and Recommendations," PICPA provides IRS with eight recommendations for statutory, regulatory, and outreach action. In short our recommendations are:

1. Exercise extreme care in crafting statutory responses, recognizing the varying levels of competency in tax return preparers and avoiding confusion in the marketplace for tax return preparation services. Any statutory response should exempt practitioners covered by Treasury Circular 230 from further oversight.

2. Require a minimum level of tax training and examination for non-Circular 230 tax return preparers; including appropriate background verifications.
3. Simplify the undue complexity of the Internal Revenue Code.
4. PICPA further recommends the use of a single tax practitioner identification number for all IRS purposes.
5. Congress should extend the entity-level penalty regime of Section 822 of the American Jobs Creation Act of 2004 to all entities that provide tax return preparation services, with the exception of IRS VITA and LITC programs.
6. The current administration, Congress, and the IRS should exercise their moral suasion through outreach activities that promote appropriate ethical standards for the IRS, tax return preparers, and taxpayers, focusing on "Do the right thing!" and "Do the thing right!" messages.
7. Congress and the IRS should ensure adequate funding for consistent and even enforcement of all Internal Revenue Code (IRC) and Treasury regulations.
8. IRS TAS and Compliance Divisions should complete their contemplated research on the sources of noncompliance, including research on the ethical constructs of the Millennial Generation and the examination activities that yield significant audit adjustments on our nation's largest companies.

## **Section II:**

### **Purpose and Scope**

IRS Commissioner Douglas Shulman announced June 24, 2009, that by the end of 2009, he will propose a comprehensive set of recommendations to help the IRS better leverage the tax return preparer community to achieve the two goals of increasing taxpayer compliance and ensuring uniform and high ethical standards of conduct among tax preparers.<sup>1</sup> To that end, the IRS published Internal Revenue Notice 2009-60, which requested public comment regarding the IRS review of issues concerning tax return preparers.

The purpose of this position paper from PICPA is to respond to Commissioner Shulman's request for public comment. In general, the scope of this position paper will be limited to specific questions raised in IRS Notice 2009-60. However, there is certain corollary or background information that must be communicated to appropriately illuminate the context in which tax return preparers operate.

IRS Notice 2009-60 requests answers to these questions:

- What types of individuals, entities, and professionals currently work as tax return preparers? How are their tax return preparation services monitored or regulated by professional organizations or the government? How could this monitoring and regulation be improved?
- How do differences in regulation and oversight affect how various groups of tax return preparers interact with the IRS and taxpayers?
- Is there a minimum level of education and training necessary to provide tax return preparation services? If so, who should be responsible for ensuring that a tax return preparer meets this minimum level, and how should that be done?
- What, if any, service and outreach should be provided to tax return preparers and taxpayers? Who should provide (and bear the costs for) these services?
- Should tax return preparers be subject to a code of ethics, and, if so, what specific behavior should that code promote or prohibit? How would that code of ethics interact with existing ethical standards that may already be applicable?
- What, if any, responsibility should the firms or businesses that employ tax return preparers have for the conduct of the individuals they employ?
- What, if any, responsibility should tax return preparer professional organizations have for the education, training, and conduct of their members?
- If tax return preparation services should be regulated, what, if any, special provisions should be made for individuals who already are tax return preparers, licensed attorneys, certified public accountants, enrolled agents, or software providers?
- What, if any, additional legislative, regulatory, or administrative rules should the IRS consider as part of its proposals with respect to the tax return preparer community?

## **Section III:**

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<sup>1</sup> Internal Revenue Notice 2009-57. Downloaded Aug. 15, 2009, from <http://www.irs.gov/le11'Sroom/article/O..id- 209375.00, html>

### **Current State of the Tax Return Preparation Market**

The U.S. accounting and tax preparation industry includes about 100,000 firms with a combined annual revenue of \$95 billion. Large companies include PricewaterhouseCoopers, KPMG, Deloitte Touche Tohmatsu, Ernst & Young, and H&R Block. The industry is fragmented: the 50 largest companies hold less than 50 percent of the market. Most firms are small, with annual revenue under \$1 million; large local firms may have revenue of \$5 million to \$10 million. The industry includes firms that provide primarily accounting, tax preparation, auditing, bookkeeping, and related services, but doesn't include enterprises such as law firms that may provide these services as a secondary line of business. Major services in this market include tax preparation, payroll services, auditing, bookkeeping, tax consulting, and general accounting. Tax preparation accounts for 25 percent of industry revenue.<sup>1</sup>

Those firms within the industry prepare federal, state, and local income tax returns, as well as information returns for individuals, corporations, partnerships, estates, trusts, and tax exempt organizations. In fiscal year 2008, a total of 200,453,000 federal tax and information returns were filed, in the categories presented in the table on page 6:

A sizeable increase in returns-filed data is expected for calendar 2008 as the economic stimulus programs are expected to bring more individuals to file individual income tax returns to obtain stimulus benefits. Many of these taxpayers may not be required to file returns normally. There may also be some increases in individual income tax returns filed to obtain refundable credits, reflecting more difficult national economic circumstances in calendar 2008.

### **Defining the Tax Return Preparer**

The Internal Revenue Code Section 7701(a)(36) defines a tax return preparer as:

#### **(A) In general**

The term "tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this title or any claim for refund of tax imposed by this title. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

#### **(B) Exceptions**

A person shall not be a "tax return preparer" merely because such person--

- (i) furnishes typing, reproducing, or other mechanical assistance,
- (ii) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,
- (iii) prepares as a fiduciary a return or claim for refund for any person, or
- (iv) prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

Treasury Regulation 301.7701-15(b) also elaborates the difference between a signing preparer and a non-signing preparer:

#### **(1) Signing tax return preparer**

A signing tax return preparer is the individual tax return preparer who has the primary responsibility for the overall substantive accuracy of the preparation of such return or claim for refund.

#### **(2) Non-signing tax return preparer**

- (i) In general. A non-signing tax return preparer is any tax return preparer who is not a signing tax return preparer but who prepares all or a substantial portion of a return or claim for refund within the meaning of paragraph (b)(3) of this section with respect to events that have occurred at the time the advice is rendered. In determining whether an individual is a non-signing tax return preparer, time spent on advice that is given after events have occurred that represents less than 5 percent of the aggregate time incurred by such individual with respect to the position(s) giving rise to the understatement shall not be taken into account.

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<sup>2</sup> *Accounting Services - Quarterly Update, Aug. 3, 2009. First Research Industry Profiles 3 Aug. 2009 ABI/INFORM Trade & Industry, ProQuest. Web. 15 Aug. 2009.*



Notwithstanding the preceding sentence, time spent on advice before the events have occurred will be taken into account if all facts and circumstances show that the position(s) giving rise to the understatement is primarily attributable to the advice, the advice was substantially given before events occurred primarily to avoid treating the person giving the advice as a tax return preparer, and the advice given before events occurred was confirmed after events had occurred for purposes of preparing a tax return. Examples of non-signing tax return preparers are tax return preparers who provide advice (written or oral) to a taxpayer (or to another tax return preparer) when that advice leads to a position or entry that constitutes a substantial portion of the return within the meaning of paragraph

(b)(3) of this section.

Treasury Regulation 301.7701-15(d) indicates a person may be a tax return preparer without regard to educational qualifications and professional status requirements. Thus, IRS regulations require no minimum training or examination whatsoever to be a tax return preparer. See recommendations 1 and 2 on page 29.

The typical types of preparers of the above returns include the following:

- Certified public accountants (CPAs)
- Public accountants
- Attorneys
- Enrolled agents
- Preparers in multi office chains and franchises
- Single-office preparers
- Volunteer Income Tax Assistance (VITA) preparers
- Officers and employees in bank trust departments acting as fiduciaries
- Officers and employees in business tlx departments
- Partners in partnerships
- Individuals

According to the IRS, tax return preparers prepare about 62 percent of all individual tax returns.<sup>1</sup>

According to the Internal Revenue Manual (IRM) Section 1.1.20.3 (5), "Unenrolled preparer" is defined as an individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or regulations) to sign the tax return. This person may represent the taxpayer before revenue agents, customer service representatives, or similar officers or employees of the IRS during an examination of the taxable year or period covered by that tax return, but, unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, counsel, or similar officers or employees of the IRS or the Department of Treasury. Those privileges of limited practice are also codified in IRS Revenue Procedure 81-38 "Statement of Procedural Rules."

### **"Reality Check" Issues**

Reality Check issues include complexity of the Internal Revenue Code, shifts in ethical constructs of the Millennial Generation, and the Tax Gap.

*3 IRS Statistics of Income, Tax Year 2006: Taxpayer Usage Study (Oct. 26, 2007) as cited in the National*

*Taxpayer Advocate Report to Congress/or Fiscal Year 2010. (June 30, 2009)*

#### *Complexity of the Internal Revenue Code*

The complexity of the IRC is an issue that fosters the related problems of poor voluntary compliance; difficult, expensive, and inconsistent enforcement; and the affordability of representation. The tax system is out of control, and our members who are tax practitioners are continuously challenged to stay current with constant changes in tax law.

If educated tax practitioners have difficulty staying informed within a reasonable time commitment, how can unrepresented, less-educated taxpayers voluntarily comply with the constantly changing tax system?

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<sup>3</sup> *IRS Statistics of Income, Tax Year 2006: Taxpayer Usage Study (Oct. 26, 2007) as cited in the National Taxpayer Advocate Report to Congress/or Fiscal Year 2010. (June 30, 2009)*

The resolution for the complexity problem requires both Congress and the IRS to study alternative tax systems. The American Institute of CPAs (AICPA) recommends 10 guiding principles for good tax policy.<sup>4</sup>

1. **Equity and fairness:** Similarly situated taxpayers should be taxed similarly.
2. **Certainty:** Tax rules should clearly specify when the tax is to be paid, how it is to be paid, and how the amount to be paid is determined.
3. **Convenience of Payment:** A tax should be due at a time or in a manner that is most likely to be convenient to the taxpayer.
4. **Economy in Collection:** The costs to collect a tax should be kept to a minimum for both the government and taxpayers.
5. **Simplicity:** Tax law should be simple so taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner.
6. **Neutrality:** The effect of tax law on a taxpayer's decisions as to how to carry out a particular transaction or whether to engage in a transaction should be kept to a minimum.
7. **Economic Growth and Efficiency:** The tax system should not impede or reduce the productive capacity of the economy.
8. **Transparency and Visibility:** Taxpayers should know that a tax exists, and how and when it is imposed upon them and others.
9. **Minimum Tax Gap:** A tax should be structured to minimize noncompliance.
10. **Appropriate Government Revenues:** The tax system should enable the government to determine how much tax revenue will likely be collected and when.

Consider the above guidelines as the standard by which to evaluate the challenges of managing the tax return preparer community.

The wisdom of tax system simplification that was expressed in the AICPA Tax Policy Concept Statement 2: *Guiding Principles for Tax Simplification* published in 2002 is even more applicable today in the current tax law environment:

*Guiding Principles for Tax Simplification*

The U.S. tax system, as well as tax systems in most states, is based on the fundamental concept of self-assessment. The efficiency and effectiveness of this approach largely depends on the ability and willingness of taxpayers to understand and comply with their legal obligations, as well as the ability of tax administrators to interpret and equitably enforce an extensive body of tax law. In recent years, the complex nature of tax laws has undermined voluntary compliance by eroding public perceptions of tax fairness and imposing inappropriate compliance burdens. Federal and state tax agencies have difficulty providing accurate assistance to taxpayers, designing understandable forms and instructions, and promulgating timely regulatory guidance. Tax advisers spend considerable time assisting clients with compliance problems, when that time would be better spent on value-added activities, such as personal financial or strategic business planning.

Many tax professionals believe that significant simplification is needed to ensure the continued viability of our self-assessment approach. If tax laws continue to become increasingly complex, potential impacts include the following:

- Lower levels of voluntary compliance
- Inadvertent tax overpayments or deficiencies
- Increased perceptions that the tax system is unfair
- Higher costs for both tax administration and tax compliance
- Poorer quality of tax administration and tax assistance
- Inefficient economic decisions, driven primarily by tax considerations
- Unintended tax "traps" for certain taxpayers

AICPA Tax Policy Concept Statement 2 also provides this recommendation:

AICPA recommends that the following guiding principles be used in the development of simpler tax legislation and regulations:

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<sup>4</sup> "Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals." Tax Division of the American Institute of Certified Public Accountants. New York, NY (2001). Downloaded from <https://www.cpa2biz.com/ResourceCenters/Tax/ConceptStatements.htm> on May 27, 2004.

- **Make simplification a priority.** Simplification must be a priority tax policy objective, given substantial consideration in conjunction with the development of legislation and administrative guidance.
- **Seek simplest approaches.** Once tax lawmakers identify desired tax policy or revenue objectives, the simplest and most transparent approaches to implementation should be sought.
- **Minimize compliance burdens.** Compliance costs, in terms of both time and money, should be minimized and be commensurate with the resources and abilities of the affected taxpayers.
- **Reduce frequency of tax law change.** Change increases complexity in the short run, even if the change will produce long-term simplification. Tax laws should be changed only to address changes in revenue needs, to implement significant changes in tax policy, or to alleviate existing complexities and inconsistencies.
- **Use consistent concepts and definitions.** Inconsistencies in legal concepts and definitions should be eliminated in existing law and avoided in the drafting of new laws.
- **Consider administrative burdens.** The ability of tax agencies to administer, provide guidance on, and enforce the law must be considered in the development of legislation and administrative guidance.
- **Avoid limited applicability.** Tax rules that apply to a limited set of taxpayers or for only a short period of time should be avoided.

PICPA's thoughts on simplification can be found in our recommendation 3 on page 29.

#### *Shifts in Ethical Constructs of the Millennial Generation*

According to the Taxpayer Advocate's Annual Report to Congress, dated June 30, 2009, the Taxpayer Advocate Service (TAS) and the IRS Office of Research will be studying the factors affecting taxpayer compliance. We believe they will find that a shift has occurred, particularly among the Millennial Generation, that has altered the ethical barometer in a fashion that suggests there will be a lower tendency toward compliance with the IRC.

Demographic and attitudinal surveys of the Millennial Generation, those born after 1969, suggest a paradigm shift in the definitions of right and wrong.<sup>1</sup> Previous generations tended toward ethical constructs that reflected clarity in behaviors. Millennial Generation members have more relative ethical constructs, reflecting an entitlement to define one's own standards of right and wrong.<sup>5</sup> This development does not bode well for taxpayer compliance. The Millennial Generation tends to believe right vs. wrong is a function of personal choice, and that construct is driven by their internal risk assessment of the likelihood of getting caught, rather than an unchanging standard of right vs. wrong.

In 2008, the Josephson Institute conducted a study of 30,000 middle school students.<sup>2</sup> The results indicate that those students believe high expectations for ethical behavior are important. Unfortunately, those students do not act in accordance with their stated beliefs. Within one year of the survey, those middle school students engaged in these behaviors:

- 83% lied to their parents at least once about something important.
- 65% lied to a teacher at least once about something significant.
- 64% cheated at least once on a test at school.
- 82% copied another student's homework at least once.
- 23% stole something from their parents or relatives at least once.
- 20% stole something from a friend at least once.
- 30% stole from a store at least once.

Imagine the difficulties of a CEO running a corporation with 10,000 employees if you extrapolate the above results from the Josephson Institute to those employees. Would 3,000 employees steal from the company? Would 6,400 cheat on their expense reports? Would 8,300 lie to their manager?

The ethical construct suggested by this data will have a significant impact upon taxpayer behaviors and the systems of return processing, collection, and enforcement that will be necessary for an effective system of tax administration. Additionally, those ethical constructs suggest a decline in behaviors of tax return preparers, especially those who are unregulated, in the near future. See recommendations 5, 6, and 8 on page 30 regarding

<sup>5</sup> See Twenge, Jean M, "Generation ME, .. Free Press Division of Simon and Schuster (2006).

<sup>6</sup> 2008 Josephson Institute Report Card on the Ethics of American Youth. Downloaded Aug, 16, 2009, from <http://www.ji.org>, churactel'counts, org,

PICPA suggestions for maintaining high ethical standards among tax preparers.

The IRS is quick to highlight the fact that underreporting by the "small business/selfemployed" taxpayers (Schedule C sole proprietor taxpayers, partnerships, and Subchapter S corporations) are responsible for a significant portion of the underreported income tax and self-employment (SECA) tax. This segment of the population represents between \$134 billion and \$155 billion, or nearly half of the estimated tax gap. The other highlighted problem areas are underreported non-business income and overstated adjustments, deductions, exemptions, and credits, accounting for another \$67 billion to \$87 billion. Small business examination coverage tends to be in the single digits. This segment of the taxpaying public has a fairly high probability of using a tax return preparer.

IRS data on enforcement for the 2007 fiscal year Statistics of Income Table 9a paints a different compliance picture. That data indicates that recommended additional taxes on examination totaled \$43,437,364,000. Of that amount, \$28,817,682,000 was assessed on corporations; the lion's share of which was on corporations with more than \$20 billion in assets -- \$14,158,091,000 or 32 percent of assessments arising from examination. That segment does have a very high examination coverage percentage. However, the examination results suggest the large business segment needs to be watched pretty carefully also. See PICPA recommendation 8 on page 30.

#### Current State of Monitoring and Regulation

In general, there are three schemes of federal oversight. The first scheme applies to Circular 230 practitioners. Circular 230, also known as Title 31 Code of Federal Regulations, Subtitle A, Part 10, published Sept. 26, 2007, specifies how attorneys, CPAs, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers may practice before the IRS. The preceding list of practitioners is collectively known as Circular 230 practitioners. Those practitioners are subject to the general statutory scheme of sanctions discussed below plus the regulatory regime of Circular 230 (See Appendix B for Circular 230). This group of preparers are also subject to Title 31 USC Section 330, also known as the American Jobs Creation Act of 2004 (AJCA) monetary penalties. See recommendation 5 on page 30.

AJCA provides assessments of monetary penalties up to the gross income derived from the practitioner's services rendered. If the practitioner worked for an employer or firm, separate penalties could apply to the employer or firm if the entity knew, or should have known, of the prohibited practitioner conduct. Each separate penalty is limited to the gross income derived from the services rendered.<sup>1</sup>

Thus, Circular 230 practitioners could be subject to combined penalties of as much as 150 percent of the gross income derived from the tax services provided.

Circular 230 provides the rules that define who may practice or represent taxpayers before the IRS. Section 10.7 provides limited privileges of practice in certain circumstances for individuals, employees, partners, and officers of employing organizations, and provides for limited practice for unenrolled preparers with respect to returns they prepare. That regulation specifies the duties and restrictions relating to practice before the IRS. Circular 230 also codifies the violations of the regulation and the sanctions available under the regulation, including the specific rules applicable to disciplinary proceedings.

The Office of Professional Responsibility (OPR) administers the laws for Circular 230 practitioners. OPR establishes and enforces consistent standards of competence, integrity, and conduct for tax professionals (enrolled agents, attorneys, CPAs, and other individuals and groups) covered by IRS Circular 230. OPR provides education and outreach to the tax professional community and administers the enrolled agent exam. To support the IRS's strategic priorities, OPR ensures the integrity and credibility of the American tax system by working through tax professionals and with IRS operating divisions and functions. Circular 230 changes have created a need to increase awareness among tax professionals regarding the

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<sup>1</sup> IRB 2007-20, Notice 2007-39, *Disciplinary Actions under Section 822 of the American Jobs Creation Act of 2004*. Published May 14, 2007. Downloaded Aug 13, 2009. from <http://www.irs.gov>.

consequences of noncompliance. This awareness, plus increased enforcement and additional legislation, should help deter non-compliance.<sup>1</sup>

IRM Section 1.1.20.5 specifies the procedures to be followed for the reporting of a Circular 230 practitioner to OPR. That section states: referrals should be made to OPR as soon as it appears that a practitioner may be in violation of Circular 230. Circular 230, Section 10.53(a), specifies, "If an officer or employee of the Internal Revenue Service has reason to believe that a practitioner has violated any provision of this part, the officer or employee will promptly make a written report to the Office of Professional Responsibility of the suspected violation." Since the Area Return Preparer Coordinator

(RPC) may be aware of other information regarding the subject of the referral, it is recommended that a copy of the referral be provided to the Area RPC. Form 8484,

*Report of Suspected Practitioner Misconduct*, may be used to make a referral to aPR.

Use of this form is optional; however, a written report made in any other format must contain all of the information required by the form and its instructions, including the name, address, telephone number, and, if relevant, the practitioner's taxpayer identification number or employer identification number. Also, the written report should include a summary of the suspected misconduct that provides as much detail as possible regarding the misconduct in question and supporting documentation.

Misconduct (or "Disreputable Conduct") is defined in IRM Section 1.1.20.3 (7):

Disreputable Conduct for which an attorney, certified public accountant, enrolled agent, or enrolled actuary may be disbarred or suspended from practice before the Internal Revenue Service includes, but is not limited to:

(a) Conviction of any criminal offense under the revenue laws of the United States.

(b) Conviction of any criminal offense involving dishonesty or breach of trust.

(c) Conviction of any felony under the federal or state law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(d) Giving false or misleading information, or participating in any way in the giving of false or misleading information, to the Department of the

Treasury or any officer or employee thereof or to any tribunal authorized to pass upon federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term "information."

(e) Solicitation of employment as prohibited under Section 10.30 CFR, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(f) Willfully failing to make a federal tax return in violation of the revenue laws of the United States; willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any federal tax; or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade federal taxes or payment thereof.

(g) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(h) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(i) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any state, territory, possession of the United States, including a Commonwealth or the District of Columbia, by any federal court of record, or by any federal agency, body or board.

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<sup>8</sup> "The Office of Professional Responsibility (OPR) at a Glance. " Downloaded Aug. 16, 2009 from <http://www.irs.gov/irsarticlesid=77551200.html>

U) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

(k) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations and statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

(l) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the federal tax laws. False opinions described in this paragraph (l) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the tax opinion or offering material are false or misleading. For purposes of this paragraph (l), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client. In the past, the bulk of the OPR proceedings have been focused on Circular 230 practitioners who fail to file their own returns. Final agency decisions are published on the OPR Web page at <http://www.irs.gov/taxpros/actuaries/article/0..id=183923.00.html>.

The second scheme applies to VITA preparers, who are exempt from sanctions. VITA volunteer preparers must become certified by completing the online "Link and Learn" training, and they must successfully pass a series of online examinations. VITA preparers are specifically excluded from the definition of tax return preparer by Treasury

Regulation 301.7701-15(t)(l)(ii), as are their sponsoring organizations (iii), certain tax programs for the elderly (iv and v), and Low Income Taxpayer Clinics (vi and vii).

Lastly, all paid preparers, including unenrolled tax return preparers, are subject to the general statutory scheme of sanctions under the IRC, administered by the Compliance Division of IRS:

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Any tax return preparer who files returns electronically also is subject to electronic return originator rules. Other sections of the IRC may apply, too, but the above civil and criminal sections represent the most directly applicable IRC sections for tax return preparers.

Currently, tax practitioners may be assigned multiple identification numbers for different IRS purposes (PTIN, CAF, etc.). Identification and accountability would be enhanced with the use of a single tax practitioner identification number. Furthermore, IRS administration would be streamlined by the use of a single tax practitioner identification number.

Please see Appendix A for the Ethics Concept Map for CPAs in Tax Practice and Functions prepared by Edward R. Jenkins Jr., CPA. The document depicts the interaction of other oversight and regulation of CPAs in Pennsylvania. The most important aspect of this interaction is that the *Pennsylvania CPA Law* incorporates by reference the standards promulgated by the nationally recognized standard setting bodies of accountants and the laws of federal, other states, and foreign jurisdictions. Those standard-setting bodies can include the Financial Accounting Standards Board (FASB), the AICPA, International Accounting Standards Board (IASB) if adopted, and the Public Company Accounting Oversight Board (PCAOB).

Because the *Pennsylvania CPA Law* incorporates those standards by reference, those standards have the effect of law in Pennsylvania. Here is the statutory framework. The *Pennsylvania CPA Law*, Section 9.1 (a), provides grounds for discipline, most notably in these circumstances:

- (5) Provides grounds for discipline for guilty pleas, convictions, and no-contest pleas to any felony in a federal, state, or foreign jurisdiction.

- (6) Provides grounds for discipline for guilty pleas, convictions, and no-contest pleas to any crime that involves dishonesty or fraud, or any revenue law, in a federal, state, or foreign jurisdiction.
  - (8) Provides grounds for discipline for suspension or revocation of the right to practice before any federal or state governmental agency.
  - (I 6) Provides grounds for discipline for unprofessional conduct.
- Unprofessional conduct under the *Pennsylvania CPA Law*, Section 9.1 (c), includes the following:

- 1) Undertaking to perform professional services that the certified public accountant, public accountant, or firm cannot reasonably expect to complete with professional competence.
  - 2) Failure to exercise due professional care in the performance of professional services.
  - 3) Failure to adequately plan and supervise the performance of professional services.
  - 4) Failure to obtain sufficient data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.
  - 5) Failure to comply with any standard promulgated by any recognized public or private standard-setting body that is applicable to the professional service being performed.
- Other states have enacted their own statutes regulating the practice of CPAs in their respective states.

While all federal and state statutory schemes of regulation are important, a very practical standard applies to Pennsylvania CPAs: the standards created by the body of professional liability case law and settlements. Failure to observe generally accepted standards in the industry can create significant bias in the courts when clients seek to recover damages from tax practitioners. Thus, prudent tax practitioners will include systems of tax practice quality control as a means of controlling the risk arising from providing tax compliance services. AICPA has published a suggested tax practice quality control framework, as well as a variety of tax compliance control tools and checklists, effectively setting a somewhat defensible standard in litigation for tax practice.

One of the most applicable sets of standards to the practice of tax preparation are the Statements of Standards on Tax Services (SSTS) promulgated by AICPA. As noted above, these standards have the effect of law in Pennsylvania. There are eight standards currently published. AICPA proposed SSTS No.9, *Tax Practice Quality Control*, but that standard was never finalized. The eight current standards are:

Chart has been removed due to formatting.

The AICPA Code of Professional Conduct also applies to tax practice by CPAs in Pennsylvania. That code addresses the responsibilities CPAs have; particularly with respect to the public interest. That code calls all CPAs to conduct themselves with the highest level of integrity and to be objective, without conflicts of interest, and independent in rendering attest services. The code also requires CPAs to seek excellence and to exercise due care in the provision of services.

Tax practitioners who are not CPAs may have oversight from other organizations, such as the American Bar Association, Pennsylvania Bar Association, and various federal and state court systems.

### **Suggested Improvements**

PICPA believes that professionals who are subject to Circular 230 - CPAs, attorneys, and enrolled agents -- are already appropriately regulated. Furthermore, PICPA believes the VITA program has appropriate safeguards and regulation in place with respect to its volunteers who prepare specified low-income and senior citizen tax returns free of charge.

PICPA believes all other tax return preparers also should be regulated to ensure high standards among tax return preparers. PICPA believes IRC Sections 6109(a)(4), 6107, and 6695 provide the necessary statutory framework to identify all tax return preparers.

PICPA is concerned that any legislative proposals calling for the qualification of unlicensed tax practitioners may not accomplish their intended goals. Therefore, PICPA urges extreme care in

crafting a statutory response that calls for regulation of unenrolled preparers. If such proposals are considered, PICPA urges that statutory responses adhere to the following:

- Recognize the varying competency levels of tax return preparers, and not create marketplace confusions. The title assigned to any new regulated preparers should be clearly distinguishable from titles associated with CPAs, attorneys, and enrolled agents. New regulation of tax preparers could lead to marketplace confusion by using terms such as "regulated," "licensed," or "certified."
- Provide an exemption for CPAs, attorneys, and enrolled agents. Since these groups are already regulated under Circular 230, they are already subject to a regulatory process imposed on them by state boards of accountancy, state bars, court systems, and Circular 230. It is also important that exemptions for out-of state

CPAs are recognized within any proposal so the impact on license mobility is minimized.

- Address funding for regulatory oversight. Enhanced statutory or regulatory guidance will not achieve intended results if the resources are not in place to consistently enforce the law.

PICPA believes effective and efficient administration of tax law will be enhanced by requiring unenrolled preparers to complete online training, such as "Link and Learn," each year and to complete online examinations each year similar to those required for VITA volunteers. Tax return preparers that successfully complete the requisite training and examination may receive a designation similar to "IRS Registered Individual Income Tax Return Preparer for xxxx Tax Year," and be registered with the IRS for one tax season at a time. Care in selecting that designation is important to avoid marketplace confusion, as previously noted.

Additionally, background verifications should be completed to ensure Circular 230 standards for criminal and ethical background requirements are maintained. Those preparers should also have their personal filing record checked as part of the qualifications for IRS registration.

PICPA believes IRC Section 6694 is sufficient to deter tax return preparers from taking tax return positions that fail to have substantial authority. Funding to ensure appropriate, consistent enforcement of this statute is needed.

#### **Section IV:**

##### **Variability of Interaction with IRS and Taxpayers by Each Type of Tax Preparer**

A U.S. GAO report found that paid preparers in the large chains often prepared returns that were incorrect, with tax consequences that were sometimes significant. Their work resulted in unwarranted extra refunds of up to almost \$2,000 in five instances, while in two cases they cost the taxpayer over \$1,500. Some of the most serious problems involved preparers

- not reporting business income in 10 of 19 cases;
- not asking about where a child lived or ignoring GAO's answer to the question and, therefore, claiming an ineligible child for the EIC in five out of 10 applicable cases;
- failing to take the most advantageous postsecondary education tax benefit in three out of nine applicable cases; and
- failing to itemize deductions at all or failing to claim all available deductions in seven out of nine applicable cases.<sup>9</sup>

Care in using this information is warranted. The study only included 19 returns in the sample.

Recent settlements in court cases involving lax controls over the tax return preparation processes of chain preparers indicate improvement is needed by these companies in terms of tax preparation quality control. Those chains employ workers with varying degrees of training, so generalities must be carefully drawn. The largest chain, H&R Block, also owns RSM McGladrey, which is affiliated with the firm McGladrey & Pullen LLP through an administrative services agreement.<sup>10</sup>

PICPA believes independent unenrolled tax return preparers pose a risk to effective and efficient tax administration because those firms and individuals may lack the resources to develop and maintain a system of tax preparation quality control and to provide for ongoing continuing education that is necessitated by a changing tax law environment. IRS outreach, education, and

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<sup>9</sup> United States Government Accountability Office, *Testimony before the Senate Finance Committee*, April 4, 2006. Downloaded on Aug. 16, 2009, from <http://www.gao.gov/new.items/d06563t.pdf>

<sup>10</sup> On July 22, 2009, H&R Block Inc. received a notice of intent to terminate the administrative services agreement with McGladrey & Pullen LLP.



enforcement should be evenly directed toward this group of practitioners. See PICPA recommendation 5 on page 30.

Examination results suggest that problems may also exist within the tax preparation practices of our nation's largest companies. Whether internal tax departments are failing to identify all tax return positions to external reviewers or the returns are simply failing to meet the statutory hurdle of IRC Section 6694 is unknown. Further study may illuminate the causes of the significant audit adjustments arising from those large case examinations.

See PICPA recommendation 5 on page 30.

#### **Section V:**

##### **Education and Training Requirements and Enforcement**

PICPA believes effective administration of the tax law will be enhanced by requiring non-Circular 230 preparers to complete online training, such as "Link and Learn," each year and to complete online examinations each year similar to those required for VITA volunteers. Tax return preparers that successfully complete the requisite training and examination may receive a designation similar to "IRS Registered Individual Income Tax Return Preparer for xxxx Tax Year" and will be registered with the IRS. Care in selecting that designation is important to avoid marketplace confusion, as previously noted on page 24.

#### **Section VI:**

##### **Service and Outreach Recommendations for Tax Return Preparers and Taxpayers**

PICPA believes independent tax preparers may pose a risk to effective and efficient tax administration because those firms and individuals often lack the resources to develop and maintain a system of tax preparation quality control and to provide for on-going continuing education necessitated by a changing tax law environment. IRS outreach, education, and enforcement should be evenly directed toward this group of practitioners.

Additionally, information regarding the different demographic groups within and without the U.S. suggests a changing ethical construct is at hand. The shifting ethical construct may require enhanced outreach and education activities that accommodate enhanced enforcement activities. In short, PICPA believes all consumers that seek paid tax return preparation services should receive services that comply with the law.

Enforcement of the law will provide PICPA members and other Circular 230 professionals with a level competitive playing field, where all preparers are held to the same statutory standard.

Uneven enforcement effectively creates an uneven competitive landscape where taxpayers can shop tax return positions. IRS administration and

Congress should ensure adequate funding for consistent and even enforcement.

#### **Section VII:**

##### **Construct of a Code of Ethics and Enforcement**

PICPA and AICPA members are already subject to a professional code of ethics. All Circular 230 practitioners are held to the ethical standards embedded in Circular 230.

Members of the various bar associations also are held accountable to the ABA code of ethics. Those codes are important distinguishing characteristics within the market for tax professional services.

PICPA believes the attempt to impose a statutory or regulatory code of ethics on noncircular 230 tax return preparers will not achieve the desired results. PICPA further believes that the codes of ethics to which our members are held are important aspects of what generates sustainable competitive advantage in our profession. Enforcement of any additional code of ethics for all preparers would be difficult at best.

PICPA does believe the IRS and Treasury can use their outreach activities to wield their moral suasion to promote ethical standards for their organization, taxpayers, and tax return preparers alike. Those messages should be clear: abiding by the law is doing the right thing. Nonfilers and under-reporters should be portrayed as unethical individuals who effectively increase the burden of funding government on law abiding citizens.

#### **Section VIII:**

##### **Entity-Level Responsibility for Preparer Conduct**

The AJCA already provides for entity-level penalty assessments of up to 100 percent of the gross income derived from the services provided for Circular 230 tax practitioners.

PICPA believes tax preparation franchisees, chain tax preparation companies, and independent companies should be subject to the same penalty regime. All preparation companies should be

held accountable for the implementation and maintenance of a system of tax preparation quality control that provides a strong likelihood of compliance with the tax law in the conduct of providing tax preparation services.

**Section IX:**

**Professional Organization Oversight, Services for Members, and Control**

See the section titled, "Current State of the Tax Return Preparation Market," beginning on page 5.

**Section X:**

**Provisions to Recognize Individuals already in Tax Practice**

See the section titled, "Current State of the Tax Return Preparation Market," beginning on page 6.

**Section XI:**

**Statutory, Regulatory and Administrative Recommendations**

See the section titled, "Current State of the Tax Return Preparation Market," beginning on page 6.

**Section XII:**

**Conclusions and Recommendations**

**Recommendation 1:**

PICPA is concerned that any legislative proposals calling for the qualification of unlicensed tax practitioners may not accomplish the intended goals. Therefore, PICPA urges extreme care in crafting a statutory response that calls for regulation of unenrolled preparers. If such proposals are considered, PICPA urges that statutory responses adhere to the following:

- Recognize the varying competency levels of tax return preparers and not create marketplace confusions. The title assigned to any new regulated preparers should be clearly distinguishable from titles associated with CPAs, attorneys, and enrolled agents. New regulation of tax preparers could lead to marketplace confusion by using terms such as "regulated," "licensed," or "certified."
- Provide an exemption for CPAs, attorneys, and enrolled agents since they are already regulated under Circular 230, and are subject to a regulatory process imposed on them by state boards of accountancy, state bars, court systems. It is also important that exemptions for out-of-state CPAs are recognized within any proposal so the impact on license mobility is minimized.

**Recommendation 2:**

PICPA believes effective administration of the tax law will be enhanced by requiring non-Circular 230 preparers to complete online training, such as "Link and Learn," each year and to complete online examinations each year similar to those required for VITA volunteers. Tax return preparers that successfully complete the requisite training and examination may receive a designation similar to "IRS Registered Individual Income Tax

Return Preparer for xxxx Tax Year" and be registered with the IRS for one tax filing season at a time. That standard would not include preparation of business returns, including Schedules C, E and F (collectively referred to as business returns) of Form

1040. Care in selecting that designation is important to avoid marketplace confusion, as previously noted in recommendation I.

Additionally, background verifications should be completed to ensure that Circular 230 standards for criminal and ethical background requirements are maintained. Those preparers should also have their personal filing records checked as part of the qualifications for IRS registration.

**Recommendation 3:**

PICPA believes Congress and the Treasury should address the problems arising from undue complexity of the tax law by simplifying the Internal Revenue Code and Treasury Regulations. We recommend following the guidelines published in the AICPA *Tax Policy Concept Statement Number 2*. See page II for an overview of the seven points.

Within those parameters for tax simplification, PICPA believes the Alternative Minimum Tax regime should be eliminated.

**Recommendation 4:**

PICPA believes all preparers, not just Circular 230 tax practitioners, should be regulated to ensure high standards among tax return preparers. PICPA believes IRC Sections 6109(a)(4), 6107, and 6695 provide the necessary statutory framework to identify all tax return preparers. PICPA further recommends the use of a single tax practitioner identification number for all IRS purposes.

**Recommendation 5:**

PICPA believes all preparers, not just Circular 230 tax practitioners, should be regulated to ensure high standards among tax return preparers. PICPA therefore recommends that Congress should extend the monetary provisions of Section 822 of the Americans Job Creation Act of 2004 to unenrolled preparers (non-Circular 230 practitioners) and apply the entity-level penalties pursuant to Section 822 of that act to the entities that employ them.

**Recommendation 6:**

PICPA believes the current administration and Congress can use their outreach activities to promote ethical standards for their organizations, taxpayers, and tax return preparers. Those messages should be clear: abiding by the law is doing the right thing. Nonfilers and under-reporters should be portrayed as unethical individuals who effectively increase the burden of funding government on law abiding citizens.

**Recommendation 7:**

Congress and the IRS administration should ensure adequate funding for consistent and even enforcement of all of the IRC and Treasury Regulations. PICPA believes IRC Section 6694 is sufficient to deter tax return preparers from taking tax return positions that fail to have substantial authority. Funding to ensure appropriate, consistent enforcement by the IRS Compliance Division is needed.

**Recommendation 8:**

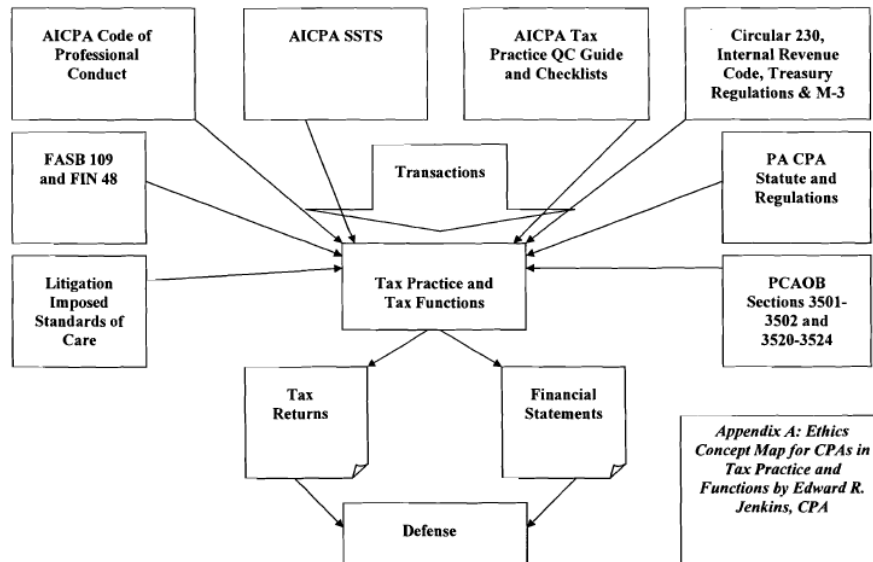
The IRS TAS study of Taxpayer Compliance may shed additional light on the sources of noncompliance. That study should contemplate the changing ethical constructs of the Millennial Generation. Further study of large case audits may also illuminate the causes of significant audit adjustments arising from those large case examinations and the degree to which additional examination of smaller taxpayers will help close the tax gap. Appropriate funding and research methodologies should be directed toward the study of taxpayer noncompliance.

**PICPA Federal Tax Committee Position Paper**  
*Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance*

**Appendices**

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**PICPA Federal Tax Committee Position Paper**  
*Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance*



**Prepared by:**

**The PICPA Federal Tax Committee**

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*P1CPA is a professional association of CPAs in public accounting, industry, government, and education working together to improve the profession and better serve the public interest.*

*Founded in 1897, PICPA is the second-oldest CPA organization in the United States.*

*Headquartered in Philadelphia, PICPA has a government relations office in Harrisburg and a western regional office in Pittsburgh. Our members provide auditing and accounting services to individuals, not-for-profit organizations, and employers of all sizes; we advise clients on state, federal, and international tax matters; and we prepare income and other tax returns for an extensive number of state taxpayers.*

Pennsylvania Institute of  
Certified Public Accountants  
August 31, 2009  
VIA Electronic and U.S. Mail

The Honorable Douglas Shulman  
Commissioner  
Internal Revenue Service  
CCPA:PD:PR (Notice 2009-60)  
RE: Notice 2009-60. Standards of Conduct for the Tax Return Preparer Community and  
Increased Taxpayer Compliance

Dear Commissioner Shulman:

On behalf of the 20,000 members of the Pennsylvania Institute of Certified Public Accountants (PICPA), attached you will find our comments on Notice 2009-60, Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance.

Please do not hesitate to contact Peter Calcara, vice president-PICPA Government Relations,

Sincerely,  
Kevin M. Mitchell, CPA  
PICPA President

Dear Sir or Madame:

On behalf of The Ohio Society of CPAs' (OSCPA) over 23,000 members, the OSCP Task Force on Standards for Tax Return Preparers appreciates the opportunity to respond to Notice 2009-60 and IR-2009-57 and provide the following comments on standards of conduct for the tax return preparer community and increased taxpayer compliance. We commend the IRS for undertaking the task of increasing taxpayer compliance and ensuring uniform and high ethical standards of conduct for tax preparers, a goal we understand and share. Further, we would welcome the opportunity to elaborate on the following points at one of the regional public forums.

**Background**

Our members advise individuals, partnerships, corporations and other taxpayers on federal, state, local, and international tax matters. It is from the input of this broad range of membership that we provide our comments.

The OSCP supports the adherence to high professional standards for all tax practitioners, especially its members. These standards include the OSCP Code of Professional Conduct (amended January 1994 containing principles and rules) and IRS Circular 230. We note however, the IRS does not regulate unlicensed tax return preparers, except for statutory authority to assess penalties for unethical or negligent conduct.

The OSCP Task Force has broken down suggestions and comments into three groups: a new model for the regulation of tax return preparers; education and training of return preparers; and enforcement related to return preparer misconduct. A summary of recommendations is also listed at the end of the letter.

**New model for the regulation of tax return preparers:**

It is OSCP's strong belief that the creation of new licensing or registration requirements should not include CPAs, tax attorneys and Enrolled Agents (EAs). As regulated tax professionals, CPAs are already Subject to a high level of education, an intense and thorough licensing process, including an exam and ethics requirement, and ongoing strict professional standards at both the federal and state level. For non-licensed tax preparers, a mechanism for educational and professional standards currently exists. A requirement that non-licensed preparers become EAs would eliminate the redundancy and complexity involved with creating an additional – and unnecessary - regulatory body.

The OSCP also has concerns with tax preparers not currently under the jurisdiction of a licensing body becoming "licensed" or "certified". The creation of a second class of licensure or certification may confuse the general public regarding the background and qualifications of the tax preparer, including the perception that the preparer is a "certified" public accountant, complete with the broad knowledge and unique skill sets the CPA certification process requires.

We believe the title of the new license should be clearly distinct from current licenses. If in fact a title is prescribed, it should not imply anything more than the requirements to obtain such as "registered".

Finally, the registration and regulation of the tax preparer community has been the subject of proposed legislation and comment at both the federal and state level for some time. The principle cause of concern stems from Earned Income Tax Credit (EITC) errors and use of Refund Anticipation Loans (RALs). Despite the concentration of errors in the EITC area, any new or expansion of an existing regulatory body that would cover all tax preparers, even those with few to no EITC clients, will most certainly be an expensive endeavor. Serious thought and deliberation should be given to who will finance any new or expanded entity as well as the number of regulators needed to enforce compliance of new rules and education requirements, including testing, on what will most surely be the thousands of previously unregulated tax preparers.

**Education and training of return preparers**

Certified public accountants understand the value of both a foundational and continuing education. To become certified as a CPA in Ohio, 150 hours - usually referred to as a 5th year in college is required to sit for the exam. Once licensed, CPAs are subject to 120 hours of continuing professional education every three years.

Non-licensed tax preparers who work in commercial tax preparation businesses typically serve a client looking only for individual income tax compliance services at a reasonable cost. The cost of the introduction of an educational requirement and/or licensing fee will most likely be passed on to the taxpayer consumer as increased fees. Even the slightest increase may drive them from using a tax preparer at all. Worse yet, a "black market" industry of tax preparers may emerge among those unwilling to be subject to regulation or education requirements. This would be a very attractive alternative for taxpayers who seek an outside person to prepare their tax return but are unwilling to pay higher fees. Quality and compliance will certainly suffer under either of these scenarios. None of the current proposals will stop preparers who are intent on committing fraud.

#### **Enforcement**

The OSCP believes the IRS already possesses appropriate authority to regulate federal tax preparers without additional legislative authority. This authority takes several forms from the penalty provisions of the Code to the enforcement of Circular 230 through the Office of Professional Responsibility. We believe extending the coverage of the Office of Professional Responsibility to unlicensed tax preparers will provide the necessary oversight using existing resources. Further, by assigning "one" unique identification number OPR and IRS could track all professionals and avoid the confusion of multiple preparer numbers including social security, CAF, P-TIN, etc.

#### **Recommendations**

While the goal of increasing taxpayer compliance and ensuring high ethical standards among tax preparers is laudable, OSCP does not support additional regulation of CPAs, JDs and EAs, or the creation or expansion of a regulatory body charged with overseeing tax preparer standards. Alternatively, OSCP recommends the following:

- The IRS currently requires paid preparers to include their Social Security number or Preparer Tax Identification number on any returns they prepare. A recent report by the Treasury Inspector General of Tax Administration concluded the IRS does not currently possess the capability to track all returns completed by a preparer. The IRS should develop enforcement tools to track tax returns by paid preparer. If, for example, a high number of errors by a preparer relate to the earned income tax credit (EITC), the unique identification number would allow the IRS to flag all EITC returns filed by that particular preparer for audit. Should the error rate continue, require additional education to be completed by the preparer or prohibit that preparer from submitting returns on behalf of taxpayers.

- Serious consideration needs to be made for tax simplicity. If the complexity of the tax code, particularly the EITC, is causing a high rate of errors among preparers then one must look at how to ease the compliance burden that exists for all taxpayers.

Simplifying the tax code is an important step towards improving voluntary compliance and accuracy.

- As opposed to spending funds creating an additional regulatory structure that may not increase compliance, use existing IRS enforcement tools with additional staff to increase audit coverage, particularly in the EITC area. We contend these suggestions will increase compliance more than a preparer registration system.

It is our final recommendation that no sweeping changes should be made based upon what appears to be isolated incidents - the misuse of the EITC. Given our suggestions above, we feel strongly that the IRS currently has the necessary tools in place. No amount of increased complexity or regulatory structure can guarantee quality.

Again, thank you for allowing us to comment on the proposed new model of standards for tax return preparers. Should you have question or need clarification on any of the comments above, please contact Amy Mignogna, senior manager, governmental affairs

Sincerely,  
Matt Yuskewich, CPA  
Chair, The Ohio Society of CPAs  
Member, Tax Legislation Policy Committee

David Reape, CPA  
Chair, Tax Legislation Policy Committee

From: Lee Slater  
Sent: Tuesday, September 01, 2009  
Subject: CFP's

I'd like to recommend that special consideration be given to Certified Financial Planning Practitioners tm in the licensing process. CFPs are already subject to rigorous testing, continuing education requirements, a Code of Ethics and Professional Responsibility and the Fiduciary Standard. These last items exceed responsibility of CPAs and EAs.

Lee Slater  
**Lee Slater**  
MBA, CFP@  
Registered Investment Advisor



From: Brent Stewart  
Sent: Tuesday, September 01, 2009

After reading and consideration of the transcript from the July 30, 2009 Return Preparer Review Public Forum, we believe the following should be enacted:

- Practice before the IRS should encompass tax return preparation, thus all tax preparers should be subject to Circular 230.
- All tax preparers should be required to have a PTIN or similar number.
- All tax preparers should be required to complete a number of hours of continuing education each year on the subject of taxes and tax preparation and should be required to report on that continuing education to the appropriate authority.

Sincerely,  
Brent P. Stewart, CPA  
Stewart & Stewart, CPAs, P.C.

Dear Mr. Goldstein:

The Virginia Society of Certified Public Accountants (VSCPA) welcomes the opportunity to comment on Internal Revenue Service (IRS) Notice 2009-60, *Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance*.

We submit the following comments on behalf of the 8,700 members of the VSCPA and ask the IRS to make final recommendations that address redundant regulation of CPAs and expand existing regulations to include unlicensed tax preparers.

The notice specifically refers to the "Preparer Community," which includes Certified Public Accountants (CPA), enrolled agents, software providers and other tax preparers. The following comments are provided from the perspective of CPAs who currently have an established framework of licensure and ethical standards of conduct to which they must adhere.

The VSCPA is extremely concerned about redundant regulation and enforcement on CPAs who prepare tax returns. Some of the current requirements for CPAs include, but are not limited to:

- Regulation by state Boards of Accountancy and requirements to annually maintain CPA licenses.
- Continuing professional education obligations to meet regulatory and ethics requirements in most jurisdictions.
- Compliance with regulations and standards set forth by any governmental agency, as required by the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct and Virginia Accountancy Statute (Section 54.1-4413-3). Therefore, CPAs are already regulated by the Internal Revenue Code (IRC) and related regulations, including Circular 230.
- Professional standards that CPAs cannot accept any engagement to prepare a return unless they are competent to prepare that return. Acceptance of an engagement in which the individual preparer is not competent would be a violation of all codes of conduct, including Circular 230.

Adding an additional level of registration and regulation would only cause confusion and redundancy. Furthermore, creating a registration requirement for all tax preparers could give the public the impression that all tax preparers possess the same level of expertise and knowledge as CPAs, adding to an already existing misconception that all accountants are CPAs.

As CPAs, we share the concerns of the IRS regarding members of the preparer community who are not currently subject to a framework of licensure or standards of conduct. The large majority of United States taxpayers rely upon the tax preparer community to file their returns and assist with various tax filings. Rather than adding a separate set of procedures and oversight, we believe that existing IRS procedures and regulations should be expanded to include unlicensed preparers. These existing procedures and regulations should be revised to include the following:

- Provide a uniform definition of "Tax Preparer": Confusion currently exists regarding the definition of tax preparer. As the first step in establishing a uniform system, we recommend clarification of the definition of tax preparer and a requirement that all regulations and rulings adhere to this uniform definition.
- Use of Preparer Tax Identification Numbers (PTINs): The voluntary PTIN system of identifying preparers was established several years ago so that preparers did not have to use their own Social Security Number on tax returns. Most CPAs who prepare income tax returns are currently using PTINs on a regular basis. We recommend the use of PTINs become mandatory for all tax preparers to advance uniformity and provide the IRS with a consolidated database of preparers.
- Minimum levels of annual continuing education: As CPAs, we are required to meet certain requirements for continuing professional education. We recommend that similar requirements be imposed for all tax preparers.
- Uniform coverage under Circular 230 and IRC Section 7216: These existing frameworks already cover CPAs and other professionals. We recommend that Circular 230 and IRC Section 7216 be expanded to include all tax preparers. For example, Circular 230 applies to attorneys, CPAs, enrolled agents, enrolled actuaries, enrolled retirement plan agents and appraisers practicing before the IRS. It should be expanded to apply to all individuals or entities who prepare tax returns of any type for third parties.
- Adequate and simultaneous implementation time: For many established tax preparation companies, these recommended changes will require adjustments to their operating procedures and policies. We recommend providing an implementation time of at least 12 months from the date of issuance.

The guiding message underlying our comments and recommendations is to utilize the existing procedures and regulations for tax preparer regulation, and to provide uniformity across the preparer community.

Adding additional regulations will not solve the problems of increasing taxpayer compliance and ensuring that preparers meet both uniform and high ethical standards of conduct. The framework is already in place and just needs to be expanded to cover all tax preparers. Implementation of these recommendations will enable the IRS to have a stronger message to provide American taxpayers guidance in choosing a tax preparer wisely.

Thank you again for the opportunity to provide comments on this very important issue. If you have any questions or concerns, please don't hesitate to contact me or VSCPA Government Affairs Director Emily Walker.

Sincerely,  
James K. Walker, CPA  
Chair, Virginia Society of CPAs